

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

IN RE: . Case No. 21-30589 (MBK)  
. Chapter 11  
LTL MANAGEMENT LLC, .  
. Clarkson S. Fisher U.S.  
Debtor. . Courthouse  
. 402 East State Street  
. Trenton, NJ 08608  
. .  
. Tuesday, March 8, 2022  
. 10:00 a.m.  
. . . . .

TRANSCRIPT OF MOTION AND APPLICATION  
FOR RETENTION HEARING  
BEFORE THE HONORABLE MICHAEL B. KAPLAN  
UNITED STATES BANKRUPTCY COURT JUDGE

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\* \* \* \* \*



1 THE COURT: Allow me a couple of moments.

2 All right. We're ready, Bruce, and loose.

3 THE CLERK: Yeah.

4 THE COURT: Off the privacy.

5 Okay, good morning, again. This is Judge Kaplan. We  
6 have a filled courtroom, but for those who are appearing  
7 through Court Solutions, as a reminder, please remain on mute.  
8 But if you wish to be heard, please make use of the raise hand  
9 function so that I can call on you.

10 And welcome, again, everyone.

11 We have several matters on the agenda for today. I  
12 want to start off on a personal note. It's been brought to my  
13 attention that a tongue-in-cheek reference that I made in my  
14 opinion on the preliminary injunction regarding my infamous  
15 retirement clock, this is it, that it has been viewed, and I  
16 think understandably, as insensitive or hurtful for the  
17 plaintiffs, the poor claimants in these cases, who obviously  
18 live day to day by clocks and calendars. Clearly, that wasn't  
19 even within the realm of my thinking when making the comment.  
20 It was to simply reinforce the Court's intention to let the  
21 parties know that the Court's going to be on top of things, so  
22 to speak, managing, or at least oversight, because I had  
23 indicated that I would be carrying the preliminary injunction  
24 for a few months and I didn't want the parties to think that  
25 they could just, I think I used the phrase, "slow-walk the



1 case."

2 But it certainly meant -- I meant no disrespect. And  
3 I understand how it could -- certainly, how it came off. And  
4 so I wanted to give my apologies to the plaintiffs and anyone  
5 who might've found it hurtful and insensitive. As my wife will  
6 explain, often enough, my lack of sensitivity is well-known at  
7 times. But it certainly wasn't intended.

8 Now, moving to today's agenda. We have a number of  
9 matters on, administrative and substantive. I wanted to at  
10 least do what I hoped would be the easy tasks first. I wanted  
11 to talk about future omnibus dates so we have an idea of  
12 calendaring. April is tight. I am scheduled for some vacation  
13 and speaking at some seminars. After March 30th, which is our  
14 next omnibus date, and my expectations for the omnibus dates  
15 are that they will be in-person. Dates in between can be  
16 matters that are brought on shortened time. Emergent matters  
17 certainly could be handled by Court Solutions, so as to try to  
18 reduce the time and expense for you all.

19 And even for the omnibus dates, certainly  
20 appearances, we are streaming through Zoom, but for those who  
21 want to be heard and argue, you're always welcome to  
22 participate through Court Solutions. The next date I have is  
23 Tuesday, April 12th. That would be the only April date. Then,  
24 Wednesday, May 4th; Tuesday, May 24th; and June, I believe  
25 June 14th. That certainly takes us out of the -- let me just



1 check on that June 14th date.

2 I obviously understand that there are other cases  
3 that you all have in other jurisdictions, some small matter  
4 going on in Delaware for the Boy Scouts and all is going to  
5 take a few weeks. So if these dates conflict, let me know,  
6 we'll work on other dates. But I'm also trying to fit them  
7 into my schedule as well.

8 Yep, June 14th. All right.

9 Let's turn to, if we may, the appointment of an FCR.  
10 There's been a flurry of correspondence from the two Committees  
11 and the debtor. If my understanding is correct, the TCC1 and  
12 the debtor, actually and TCC2 have agreed on the appointment of  
13 Randi Ellis as an FCR. So my first question would be, and I  
14 know there's a request on behalf of TCC2 for a separate  
15 appointment of an additional FCR. But my first inquiry would  
16 be, is there a need to delay that appointment of Ms. Ellis?

17 In other words, there was, I think in my initial  
18 protocol it was to March 30th, but there seems to be a  
19 consensus, and I want to grab whatever consensus I can. If  
20 there's a consensus on that individual, why not go forward and  
21 have that one brought onboard.

22 Mr. Gordon?

23 MR. GORDON: Your Honor, Greg Gordon, on behalf of  
24 the debtor.

25 We see no reason to delay the appointment. We



1 understand that both Committees support Ms. Ellis as the FTCR  
2 and we think that appointment should be made as soon as  
3 possible.

4 THE COURT: Mr. Molton, good morning.

5 MR. MOLTON: Good morning, Judge. David Molton at  
6 Brown Rudnick for Committee 1. We join Mr. Gordon and I  
7 presume Ms. Speckhart of Committee 2. I just want to note  
8 something that's important for the record, Your Honor.

9 THE COURT: Yes.

10 MR. MOLTON: Ms. Ellis, if appointed, will be the  
11 first woman Future Claims Representative in the entire history  
12 of Future Claims Representatives in the United States, and we  
13 think it appropriate that it happened in this case. And I  
14 think it's important for Your Honor to know that.

15 THE COURT: No, I appreciate that. I didn't realize  
16 that. And I think that makes it worth a valid selection.

17 Ms. Speckhart. Good morning.

18 MS. SPECKHART: Good morning, Your Honor. Cullen  
19 Speckhart of Cooley appearing on behalf of TCC2.

20 Your Honor, we did file a letter indicating that we  
21 support Ms. Ellis's appointment. And we are certainly pleased  
22 that there would be a female in the mix if that were to occur.  
23 We also expressed our receptivity to the appointment of  
24 Mr. Green. I believe that was the Court's selection for an  
25 FCR.



1 And just to step back, we have asked for a separate  
2 FCR, largely in recognition that J&J's approach to resolving  
3 mesothelioma cases is markedly different from its approach to  
4 ovarian cancer claimants, and we want to ensure that the  
5 representatives of the future claims for mesothelioma are able  
6 to negotiate with the debtors in a way that is free of  
7 conflict, free of restraints, and directed to pursuing a result  
8 that is consistent with the reality of how mesothelioma claims  
9 are different.

10 And, by way of example, J&J has pursued a materially  
11 distinct litigation strategy with respect to mesothelioma  
12 claimants that has resulted in settlements that are more robust  
13 and comparatively higher. There is no dispute that asbestos  
14 causes mesothelioma. The settlement ranges that the debtors  
15 have demonstrated are markedly higher, and we included those  
16 figures in our correspondence to the Court that in no way  
17 reflects our ideas about the relative value of the claims. It  
18 is just reflecting the debtor's historical approach and the  
19 debtor's behavior with respect to those claims.

20 And let's not forget about the people, Your Honor.  
21 The survival rates for mesothelioma are much lower. The  
22 disease state is different. And in light of the multitude of  
23 differences, we believe that it would be much easier, more  
24 fluid, more efficient if the future mesothelioma claims and the  
25 future ovarian cancer claims are independently represented to



1 achieve fully consensual plan results.

2 And so that is the basis for our request for a  
3 separate FCR. And, again, we would support Ms. Ellis and  
4 Mr. Green for either of those positions.

5 THE COURT: All right. Thank you.

6 Then finishing with Ms. Ellis, I see no reason not to  
7 have her appointed. And I want to discuss the possibility of a  
8 second FCR, FTCT I think we're using an extra letter. I also  
9 received from Ms. Jones correspondence this morning, I believe,  
10 taking issue with the timing of an appointment of the FTCT, for  
11 a second FTCT. So I'm going to turn to Ms. Jones for a moment.  
12 But I will ask debtor's counsel to submit a form of order  
13 appointing Ms. Ellis. We might as well get that onboard and  
14 started.

15 MR. GORDON: We will do that, Your Honor, and we'll  
16 share that with the other side before we submit it to the  
17 Court.

18 THE COURT: Thank you.

19 Ms. Jones.

20 MS. JONES: Thank you, Your Honor. Laura Davis  
21 Jones, Pachulski Stang Ziehl and Jones, on behalf of Arnold and  
22 Itkin.

23 Your Honor, we did see a letter filed by  
24 Ms. Speckhart about 4:45 yesterday afternoon where she requests  
25 a separate FTCT for TCC2, or for the meso claimants. Your



1 Honor, our concern was it was very, it's very last minute, it's  
2 less than, you know, 18 hours ago, and we need time to talk  
3 with our client about it. And also I think it's artificially  
4 way too soon. I understand that the TCC ceases to exist  
5 tomorrow, and that was probably the last minute request. But,  
6 frankly, Your Honor, this is an emergency of their making.  
7 This is, you know, the idea of there being two Committees or  
8 one Committee is several months ago, and they've had at least  
9 six weeks to bring this issue before the Court and for it now  
10 to be a crisis, Your Honor, just seems a little, or is a bit  
11 problematic.

12 So we'd ask Your Honor, as I detailed in the letter,  
13 that you give Ms. Speckhart her day in Court, but we not do it  
14 today. That we give the parties a chance to review the  
15 request, that we respond, and, Your Honor, I apologize, I don't  
16 have the dates right in front of me that I suggested. But  
17 basically asking for us to have at least a week to get back to  
18 the Court on our thoughts and have it taken up at the hearing  
19 on the 30th, which was the date that Your Honor had set for  
20 selecting the final FTCT, in any event.

21 Now, I do understand that the parties, we have not  
22 been in this loop, but that the debtor has now agreed with the  
23 Committees on their FTCT. I just heard that one minute ago.  
24 In fact, Your Honor, my request still remains that we be given  
25 an opportunity to evaluate this, frankly, new motion that's



1 been done by letter, a substantively release having to FTCRs in  
2 a case, I think it is unheard of. I don't think it's -- I  
3 don't recall any mass tort case that I've been involved in  
4 where there's been two. But in any event, Your Honor, not to  
5 want to argue the substance, but rather to give us an  
6 opportunity for notice and a hearing or at least notice and a  
7 chance to respond by letter after we talk to our client.

8 THE COURT: All right. Thank you, Ms. Jones.  
9 Ms. Cyganowski.

10 MS. CYGANOWSKI: Thank you, Your Honor. Melanie  
11 Cyganowski, Otterbourg co-counsel to TCC1.

12 TCC1, as the Court is aware, has worked diligently in  
13 connection with following the protocols set out in the original  
14 January order. We've worked closely with TCC2 and then with  
15 the debtor in these latter days.

16 Having said that, I assume, unless the Court does  
17 otherwise today, as of Wednesday, we're going to be back to  
18 TCC0, TCC Original, TCC whatever we're going to call it. And  
19 at that point, it would absolutely be appropriate for that  
20 Committee to consider the request and take it under  
21 consideration.

22 THE COURT: All right. Thank you, Ms. Cyganowski.  
23 Good morning.

24 MR. PFISTER: Good morning, Your Honor. Rob Pfister  
25 from the Klee Tuchin firm on behalf of Aylstock Witkin.



1 I join both prior comments of Ms. Jones and  
2 Ms. Cyganowski. I do think this is a very important issue. I  
3 think the Court would benefit from hearing the views of the  
4 parties -- the considered views of the parties on this issue.

5 Thank you.

6 THE COURT: All right. Thank you.

7 Mr. Gordon.

8 MR. GORDON: Your Honor, Greg Gordon on behalf of the  
9 debtor.

10 Our perspective is somewhat different. We would ask  
11 the Court simply to deny this today. We don't think there's  
12 any reason to consider this any further. This in our mind is  
13 basically a very late effort by TCC2 to relitigate the U.S.  
14 Trustee's motion with respect to the two committees, raising  
15 the same types of issues. There is no precedent for two FCRs  
16 like this in a mass tort case. I think there's been a handful  
17 of cases where there's been more than one FCR, but I think in  
18 those cases, those were different products. We're not aware,  
19 at least, of any case where there's been multiple FCRs for just  
20 because a disease is different emanating from the same product.  
21 So we don't see a basis for that.

22 The other thing I would say, Your Honor, this issue  
23 actually came up, I believe, in a hearing back in December  
24 where I kind of forecasted for the Court the potential that if  
25 we go down the road with two committees, then we're going to be



1 probably talking about two FCRs. And I think Your Honor  
2 responded at that time that you had in mind one FCR. And I  
3 think the protocol we've been operating under the last several  
4 weeks or months contemplates one FCR.

5 And this is basically, in our view, a late filed  
6 attempt to reconsider Your Honor's order on the whole FCR  
7 process. Are we now to go back and basically throw out the  
8 protocol and come up with a different protocol where, you know,  
9 maybe we don't have three proposals, maybe we each make five  
10 and we have three strikes, or something like that? It just  
11 seems to us it's too late. It's basically the same issues  
12 you've heard before. There's just no precedent for having  
13 these multiple representatives for different disease types.

14 And, you know, the idea that we would now have a  
15 further briefing and another hearing, which I guess effectively  
16 would extend TCC2 out for several more weeks just because they  
17 wait until the very last minute, that just seems inappropriate  
18 to us. And we would just ask that you deny that request today.

19 THE COURT: All right. Thank you, Mr. Gordon.

20 Anyone else wish to be heard?

21 (No audible response)

22 THE COURT: Okay. Let's also address the future of  
23 TCC2 because it's a bit intertwined. And my understanding is  
24 that a motion was filed last night or sometime yesterday to  
25 extend the existence of TCC2 for the limited purpose, as well,



1 of filing an appeal. I know there have been appeals that have  
2 been filed. I believe TCC2 filed a notice of appeal. I  
3 believe the Aylstock firm filed a notice of appeal. I just  
4 couldn't keep up. So I'm not sure who else has filed notices  
5 of appeal.

6 But I believe there was a motion that was filed,  
7 returnable on the 30th. There are motions seeking  
8 certifications of the circuit, but there's also a motion to  
9 extend the TCC2 existence for the limited purpose of conducting  
10 the appeal, and that's returnable on the 30th.

11 The Court's inclination, may come as a surprise, is  
12 to wrap these issues together. While I haven't endorsed or  
13 considered the appointment of a separate committee, I  
14 haven't -- a separate FCR, I haven't ruled it out. And I think  
15 it's important to at least hear the parties substantively as to  
16 the merits of a second FCR, really to protect the interest of  
17 the mesothelioma claimants.

18 I understand TCC2 wishes to pursue an appeal of the  
19 Court's decisions. They, in their papers, I think I glanced at  
20 them, they raised issues. They advocate that there were issues  
21 raised during the trial which were separate and apart from  
22 those that were pursued by TCC1. In order to give all the  
23 parties a sufficient time, and let me make clear, not to open  
24 up the door for extensive additional briefings, hearings, and  
25 discovery, my inclination is to schedule a hearing on the



1 appointment of a second FCR for the 30th, itself. Not to have  
2 a -- I believe Ms. Jones had requested an opportunity and maybe  
3 a hearing in advance of that.

4 I would ask that the parties, of course, meet and  
5 confer. It would involve TCC2 and the debtor at this point,  
6 probably. Well, actually, I shouldn't be presumptuous, maybe  
7 TCC1 taking part. I do not intend to go through a duplicate  
8 protocol of three names and three names and strikes. I would,  
9 if the Court is going to appoint a second FTCT, which isn't by  
10 any means definite, I would ask that each constituency, TCC1,  
11 TCC2, and the debtor be prepared to provide a single name, and  
12 the Court will have its own name. And it will be short with.  
13 I'm not allowing discovery. I'm not going through strikes or  
14 any of the other chess game that you've all been doing for the  
15 last three weeks.

16 But in order to handle that, I think TCC2 will be  
17 somewhat handcuffed if they are not in existence, leaving it to  
18 the claimants, the individual claimants comprising -- or  
19 committee members to take up the oar. So I am prepared to  
20 extend TCC2 -- irony of all ironies -- to April 12th, well, to  
21 April 11th. Our next hearing -- well, we'll call it the close  
22 of April 12th. That's the first date. In other words, so  
23 that'll all can argue on the 30th and then on April 12th, it  
24 will be disbanded. That will also allow for an argument on the  
25 motion that's pending to allow it to exist for purposes of the



1 appeal, so.

2 And I need to hear from the parties on that. So it's  
3 it'll be disbanded or maybe it'll be disbanded in part or for a  
4 limited purpose remaining, I don't know. But that gives  
5 sufficient time to at least address, and again, let me  
6 emphasize, I'm not looking to open the door for TCC2 to  
7 undertake a lot of work in the next 30 days to make up for  
8 ground, just to allow these issues to be resolved.

9 Anybody have any concerns or issues?

10 MR. MOLTON: Your Honor, David Molton, again, of  
11 Brown Rudnick, for TCC1. No issues or concerns regarding any  
12 of that, but just in light of Your Honor's direction, which we  
13 appreciate because one of the things coming in here with the  
14 motion to have TCC2 extend for the limited purpose of  
15 prosecuting the appeal put us in a very interesting position  
16 regarding the notice of appeal that we might have to file,  
17 either as TCC1 or tomorrow, what was going to be tomorrow as  
18 TCC original.

19 So we came here. One of the things you didn't see,  
20 Your Honor, on the docket, was any activity by TCC1 --

21 THE COURT: Correct.

22 MR. MOLTON: -- regarding the appeal, and it was for  
23 that very reason. Needless to say, I'm very sensitive and  
24 cautious when it comes to notices of appeal because they are  
25 jurisdictional and many lawyers know what happens if you get



1 something wrong. So your direction is really appreciated, Your  
2 Honor.

3 One of the things I can tell you now, is that TCC1,  
4 therefore, as TCC1, will be filing a notice of appeal from both  
5 the preliminary injunction order as well as Your Honor's motion  
6 to dismiss order. We will also be filing certification up  
7 petition for direct review to the Third Circuit. And that will  
8 probably be done within the next day or 24 hours.

9 One of the questions I have regarding the  
10 certification issue, Your Honor, because I think it's important  
11 for now both committees and for all of our constituents out  
12 there who participated either by zoom, by listening, or in  
13 person here a couple of weeks ago during our trial, is, you  
14 know, how Your Honor wants to hear that or structure that. Per  
15 Bankruptcy Rule 8006, Your Honor, the bankruptcy court only  
16 retains jurisdictions for 30 days from the first NOA, notice of  
17 appeal, or we think taking from Ms. Speckhart's notice filing  
18 yesterday, until April 6th. And we assume that, therefore, the  
19 Court will want to address the now two petitions, will be two  
20 petitions, for direct appeal certification.

21 The question is, how you want to do that because  
22 Rule 8006(f)(4), we can't request oral argument. And we're not  
23 entitled to oral argument unless Your Honor delivers it to us.  
24 So one of the things, Your Honor, I know Ms. Speckhart filed  
25 the motion returnable for the 30th. We will try to get it on



1 in time for that. We may have to do short notice, but it will  
2 be only losing a day or so. So I hope I don't get any issues  
3 on that.

4 But I just wanted to let you know, you know, that,  
5 you know, that will be the case as well. And somebody gives me  
6 an important note here. And, Your Honor, pursuant to Your  
7 Honor's order from January 26, that the original TCC be  
8 reinstated as of March 9th. Your Honor, today, directed that  
9 TCC2 continue its existence. Without a likewise order from  
10 your Court regarding TCC1, we go out of existence at one second  
11 past 12 midnight tonight.

12 So, in any event --

13 THE COURT: I can wipe them all out.

14 MR. MOLTON: You'll take us all out.

15 In any event, if Your Honor is going to do that, we  
16 think a parallel, you know, order extending TCC1 until that  
17 time and then having the reconstitution happened on the date  
18 Your Honor suggested would be fine.

19 THE COURT: All right. For clarity, I'm prepared to  
20 issue a bench order extending the existence of both TCC1 and  
21 TCC2 through and including April 12th.

22 MR. MOLTON: Thank you, Judge.

23 And I do want to -- I don't know if I'm going to get  
24 a chance today. Mr. Jonas, of course, is going to take the  
25 rostrum soon. But to extend our thanks for your comments at



1 the very beginning of today's Court session. I think Your  
2 Honor was right to note, you know, the sensitivities within our  
3 constituency. And I know it's going to be a meaningful  
4 statement, you know, what you said first thing this morning to  
5 all of our constituents, whether they be ovarian cancer  
6 claimants or mesothelioma claimants.

7 And lastly, Your Honor, thank you for reminding  
8 Ms. Lauria and myself that we have to spend the next three  
9 weeks on Zoom in front of Judge Silvers.

10 THE COURT: Good luck with that.

11 MR. MOLTON: Thank you.

12 (Laughter)

13 THE COURT: I do want to address the issues on the  
14 petitions for direct appeal. But Mr. Gordon, did you want to  
15 be heard?

16 MR. GORDON: Thank you, Your Honor. Greg Gordon  
17 again.

18 Obviously, I heard well Your Honor's ruling and  
19 respect it. I do have a concern, and I'm just going to state  
20 it for the record, which is, you know, the longer we have a  
21 period in time where these two committees continue, it's almost  
22 going to become like a fait accompli, I think, with respect to  
23 the appeal because the next argument you're going to hear is  
24 that, but we already filed notices of appeal. We've already  
25 started the certification process and the like. And that to us



1 is just unfortunate because we thought your order was very  
2 clear that absent something happening prior to March 9th,  
3 things would revert back to where they are. So again, totally  
4 understand what you said, respect it, but it just seems to me  
5 we're headed into a direction that's going to make this perhaps  
6 even more complicated and difficult to address the longer it  
7 goes.

8           And then, just one clarification with respect to  
9 TCC2, we assume that it's continuing in effect for just the  
10 purpose of addressing these two issues that Your Honor was  
11 talking about. At least that was my understanding. I just  
12 wanted to clarify that.

13           THE COURT: That is my understanding.

14           MR. GORDON: Okay. Thank you, Your Honor. And I  
15 think Mr. Molton asked the question that we were going to ask,  
16 which is what happens with TCC1, because that's the other  
17 anomaly of this that TCC2 was asking for relief that has an  
18 impact on TCC1 and it wasn't asking for the same relief, and  
19 obviously, that issue has now been addressed.

20           THE COURT: All right. Thank you.

21           MR. GORDON: Thank you.

22           THE COURT: No, that's fine.

23           And the court is cognizant of the length of time TCC2  
24 continues in spurts has an impact, and it hasn't been my  
25 intention to keep it going unless the facts and law warrant it.



1 Ms. Speckhart?

2 MS. SPECKHART: Yes, Your Honor. Thank you. Cullen  
3 Speckhart, again.

4 Just on that broader topic, on the topic of TCC2's  
5 continued existence in the case and our potential role in the  
6 case between now and April 8th, I do want to just clarify. We  
7 filed a motion yesterday acknowledging the substance and the  
8 import of Your Honor's original dissolution order, which  
9 mandated that TCC0 be reinstated pursuant to Judge Whitley's  
10 order in North Carolina. And we set the motion seeking our  
11 continued existence for limited purposes of the appeal for  
12 March 30th. I believe that objections are due on the 23rd.

13 And that does raise some issues that are timely and  
14 topical for today, some of which Mr. Gordon and Mr. Molton have  
15 referenced. And just parenthetically, I'll note, because I  
16 think I have too, that these are absolutely unusual  
17 circumstances and we've all been faced with an incredibly novel  
18 and difficult set of facts and case dynamics. And we were,  
19 frankly, very surprised and disappointed in the U.S. Trustee's  
20 decision not to file the appropriate pleadings to present a  
21 showing that Your Honor asked for on the topic of two  
22 committees.

23 We did believe, then, at the time that the Committees  
24 were split, and we continue to believe that, a two-committee  
25 structure is the best result for the case. We think that it is



1 one that will allow us to deal most expeditiously and minimizes  
2 the probabilities for independent objections later on if  
3 there's an estimation proceeding and a plan proceeding. And it  
4 will allow negotiations among the estate parties, the estate  
5 fiduciaries, to proceed on parallel paths. And, again, this is  
6 a broader point than just the limited existence for purposes of  
7 the appeal.

8 But the question for today is, what is right for the  
9 case? And we read your opinion on the motion to dismiss, and  
10 we understand the mantra. If this case is going to continue  
11 for the purpose of achieving an equitable and efficient  
12 resolution to the talc related claims, then, in our view, let's  
13 get to the result through mediation or otherwise. Let's  
14 negotiate in parallel paths. Let's have negotiations with the  
15 debtors on a parallel track between OCs and the debtors and  
16 mesothelioma, separately. The debtors have demonstrated that  
17 they can walk and chew gum at the same time.

18 So the question for us is, how can we help the case  
19 over the next period of time to April 12th, or whenever the  
20 next date is? If that's in a mediation context, or it isn't,  
21 we would like to assist the Court's vision for this case and be  
22 a force for good in the meantime.

23 THE COURT: Thank you. I appreciate your comments.  
24 I think they go a long way.

25 The request of the Court that I've seen in



1 correspondence was with the appeal and the request that has  
2 been raised has been with the FTCR, so that's why I limited to  
3 extend the courtesies.

4 MS. SPECKHART: Yes, sir.

5 THE COURT: I don't believe anything the Court can do  
6 stops parties from talking, whether they are talking under the  
7 purview of TCC2 or individual claimants. So as we proceed  
8 through April 12th, I appreciate the intent to try to engage  
9 the debtor and TCC1, and I don't think the Court is placing any  
10 impediments in that way.

11 Parties and lawyers can speak and agree and move  
12 forward without any formality. And we'll address the specific  
13 formalities of the existence of these Committees by April 12th.  
14 So I thank you.

15 MS. SPECKHART: Thank you, Your Honor.

16 THE COURT: Counsel?

17 MR. GLASSER: Were you calling on me, Your Honor.

18 THE COURT: Oh, I'm sorry. Mr. Glasser, I'll get to  
19 you in a moment. I have Counsel in front of me. Thank you.

20 MS. RICHENDERFER: Good morning, Your Honor. Linda  
21 Richenderfer from the Office of the United States Trustee.  
22 Mr. Sponder and I have been sitting over there hearing all of  
23 this and waiting for the appropriate time to speak up.

24 Your Honor, one of our concerns is we don't want to  
25 disenfranchise any of the claimants here. And a concern is



1 that if TCC1 continues to exist and TCC2 only exists for  
2 limited purposes, then we may possibly run into a scenario  
3 where things will come up, parties will need to respond,  
4 Committees will need to take positions, and the mesothelioma  
5 claimants will not have a say if they are limited between now  
6 and April 12th to only addressing the FCR issue, the appeal  
7 issue, and I guess I just heard something about mediation.

8           And so that is our concern that in acknowledgment of  
9 Your Honor's order, that there should be one Committee, but you  
10 allow them to exist until such a date. I think that Your  
11 Honor's original ruling today was to extend that order, extend  
12 the date from March 9th to April 12th, which would allow them  
13 to exist for all purposes until April 12th. And then I heard  
14 it pulled back a bit after Mr. Gordon's comments. So I guess,  
15 in part, I'm seeking some sort of clarification, because again,  
16 the U.S. Trustee's interest is to make sure that all claimants  
17 have a voice in this and to make sure that the mesothelioma  
18 claimants are not taken out of having their positions  
19 represented for the next month.

20           Thank you, Your Honor.

21           THE COURT: All right. Thank you.

22           Mr. Glasser, you wish to be heard?

23           MR. GLASSER: (No audible response)

24           THE COURT: Mr. Glasser?

25           MR. GLASSER: (Indiscernible) I had a different issue



1 raised than the U.S. Trustee just did, so if you want to finish  
2 on that and then come back to me, that'd be fine.

3 THE COURT: All right.

4 Well, let me hear your issue and I'll come back and  
5 address all of it.

6 (Laughter)

7 MR. GLASSER: Yeah. My issue, Your Honor, was simply  
8 that if -- that I would like your order to stay, that whatever  
9 is filed by TCC1 and TCC2 between now and April 12th will be  
10 deemed to have also been filed by TCC0 should it be constituted  
11 because the appeal time runs in mid-April and there will not  
12 have been a notice of appeal filed by TCC0 based on how we're  
13 doing this today, which is fine, if it's deemed to have been  
14 filed by them if they do come back and (indiscernible).

15 THE COURT: Who wants to draft that order?

16 (Laughter)

17 MR. MOLTON: Judge, we'll take a whack at it.

18 MS. SPECKHART: I'm not volunteering. I'm just  
19 suggesting that there's probably a way to stipulate around the  
20 appeal issues, and we'll be happy to work on that to arrive at  
21 the correct result.

22 THE COURT: Thank you.

23 MR. MOLTON: Judge, David Molton.

24 When the two Committees were created out of the one  
25 Committee, we actually did engage in a stipulation --



1 THE COURT: Right.

2 MS. SPECKHART: We did.

3 MR. MOLTON: -- that made a successor status for each  
4 of the two Committees from the movant status of the original  
5 Committee. I'm sure there's a way to deal with that, so thank  
6 you.

7 THE COURT: Mr. Gordon?

8 MR. GORDON: Your Honor, Greg Gordon on behalf of the  
9 debtor.

10 We don't oppose that.

11 THE COURT: All right.

12 I'm going to -- I understand Mr. Gordon, your  
13 comments initially about limiting to the appeal and the FCR,  
14 and that was my inclination. I've heard from the Of the U.S.  
15 Trustee, because I cannot, sitting here at now, envision any  
16 wayword pathway where somebody -- there's an issue out there  
17 that TCC2 has to weigh in on but they're not authorized to do  
18 so, I'm just going to make it easy. I'm going to extend the  
19 period for TCC2 through April 12th. They can hear and appear  
20 on all matters and I'll just implore you all to limit the  
21 matters.

22 But otherwise, it just gets too complicated and all  
23 of the sudden, we'll be here on order shortening time for  
24 authorization to appear on one limited issue. So let's just  
25 continue *in toto* TCC2.



1 Now it's my turn to throw out a wrinkle with  
2 respect -- you can sit down or we can address it -- and that's  
3 what the direct appeals to the Circuit because Mr. Molton, you  
4 asked for guidance.

5 With respect to the preliminary injunction, the  
6 decision and the order on a preliminary injunction in the  
7 adversary proceeding, there's obviously a much stronger case  
8 that it's a final judgment terminating the proceeding. The  
9 issue on the motion to dismiss is a bit more involved.

10 My understanding of the law in this Circuit, In re  
11 Brown, I believe, 1990 decision, almost an outlier among  
12 Circuits, to allow a denial of a motion to dismiss a Chapter 11  
13 to be deemed a final judgment. I think Third Circuit Judge  
14 Jordan, in 2007, actually in a concurrence, challenged it, or  
15 raised the question. I forget which case. But even that  
16 decision was before the Ritzen Group and Bullock decisions by  
17 the Supreme court, which call for a separate distinct  
18 proceeding.

19 And I guess I'm going to find it difficult, unless  
20 this issue was resolved, and I'm not saying I've reached a  
21 decision on it, but it hasn't been briefed, how I can certify  
22 an issue to the Third Circuit that is interlocutory and not a  
23 final judgment. Maybe I can, and you know, we're all facing  
24 some new issues. But it would seem to me that maybe the better  
25 course would be to go before the district court and seek a



1 resolution of that issue, and then the district court can also  
2 certify it to the circuit. I'm not looking to avoid  
3 responsibility, but I'm not prepared yet to say that it's  
4 necessarily a final judgment or order.

5 And therefore, there's a right to appeal without  
6 authorization to pursue an interlocutory appeal. So I throw  
7 that out. And I don't know -- I'm not necessarily calling for  
8 comment, but it's something I think you all collectively have  
9 to address. I'm not prepared to address it now, Counsel.  
10 Maybe Counsel is.

11 (Laughter)

12 MR. PFISTER: Your Honor, apologies. Rob Pfister  
13 from Klee Tuchin.

14 We looked at this issue extensively. I only rose  
15 because I think it's clear from the statute. Our understanding  
16 is 158(a) is the jurisdiction for appeals from final judgments,  
17 158(a)(1), the district courts of the United States have  
18 jurisdiction to hear appeals from final judgments or orders.  
19 And then (2) is from final -- or from interlocutory orders, and  
20 (3) is with leave of the Court. And under 158(d), which is the  
21 certification statute, it grants court of appeals jurisdiction  
22 to hear appeals under Subsection A and B.

23 So we thought it was clear that if Your Honor  
24 certified it, that it could be certified even as an  
25 interlocutory matter. And I don't know that that's your



1 understanding.

2 THE COURT: I don't know. But you all have much more  
3 brainpower at your disposal to let me know if that's the case.  
4 But I think that's an initial threshold issue that has to be  
5 addressed somewhere. And I guess we'll address that on the  
6 30th when these motions are returnable. I just wanted to make  
7 sure everybody's cognizant of at least an issue that was  
8 gnawing at me. All right.

9 Then, we are set. Just to clarify, we have the two  
10 Committees in existence through the 12th. We have a hearing on  
11 the appointment of a second FTCR on the 30th. And I've also  
12 asked that you all, if that is successful, to have names ready  
13 for consideration.

14 Mr. Molton?

15 MR. MOLTON: Yeah, Your Honor. Just a clarification.  
16 David Molton for TCC1.

17 So we will, notwithstanding the rule that I  
18 mentioned, which of course can be modified by Your Honor's  
19 ruling, we will be having argument then on the certification  
20 issues --

21 THE COURT: Yes.

22 MR. MOLTON: -- on the 30th?

23 THE COURT: Yes.

24 MR. MOLTON: Okay. I just wanted that to be clear.

25 Thank you.



1 THE COURT: I anticipate argument.

2 Then, let's approach the issue of mediation. And I'm  
3 going to turn to Mr. Gordon, and I'm going to ask what the  
4 debtor's position is. I've seen there's been some discussions  
5 among Counsel. Let me, if you would apprise the Court.

6 MR. GORDON: Greg Gordon, again, on behalf of the  
7 debtor.

8 Our understanding, Your Honor, is that we had an  
9 agreement with TCC1 on a co-mediator set-up, which are Mr. Gary  
10 Russo and retired Judge Joel Schneider. And our thought was --  
11 and others will obviously be heard on this, but if Your Honor  
12 would be inclined to approve that, we would then immediately  
13 work with the other side to work up a mediation protocol that  
14 we would then come back to the Court with and present it to  
15 Your Honor for approval. And if we can't reach an agreement on  
16 the protocol, I think we could come back and explain what the  
17 dispute is and ask Your Honor to weigh in to the extent there  
18 is a dispute.

19 THE COURT: All right. Thank you.

20 I certainly don't have issues with the selections,  
21 but let me hear from Counsel.

22 MS. SPECKHART: Your Honor, Cullen Speckhart, again,  
23 on behalf of TCC2. Your Honor, I regret to inform the Court  
24 that we were not consulted with respect to the identity of the  
25 mediators, perhaps for reasons that could have been obvious and



1 had more to do with prior expectations of the existence of  
2 TCC2.

3 But as I said earlier, we are very interested in  
4 participating in the process. We would like the ability to  
5 talk to our clients about the identity of the mediators and to  
6 have some meaningful discussion with the debtors and TCC1 about  
7 that, and also to participate in drafting of the protocol.

8 THE COURT: All right. Thank you.

9 Mr. Molton?

10 MR. MOLTON: I keep on getting my mask hooked up on  
11 my glasses, Your Honor. Another scourge of the times.

12 Listen, we welcome Ms. Speckhart's comments. I think  
13 they're very constructive. I think her comments earlier about  
14 going forward and seeking within a expedited period of time, to  
15 use my word, with alacrity, we can move forward to a mediated  
16 resolution of these issues is something that I know everyone  
17 and all of the 38,000 ovarian cancer claimants that we  
18 represent on TCC1 are very interested in.

19 We've been thinking a lot about it, and as you heard  
20 from Mr. Gordon, that resulted in the proposal of a number of  
21 mediators. You know, clearly, Your Honor there's other parties  
22 here and we welcome, you know, you know, the fact that they  
23 join in us in wanting to move this case towards a resolution.

24 THE COURT: Thank you, Mr. Molton.

25 Let me ask this, then, because I want to make



1 mediation and the process going forward a priority, and I  
2 think, from what I'm hearing, I think that's shared by all  
3 here. If I were to schedule a hearing telephonic by Court  
4 Solutions for a week from now to give you all a chance to  
5 develop a protocol, see if you have input, is that doable? In  
6 other words, I want to authorize the mediators to feel  
7 comfortable enough to start picking up the phone and dealing  
8 with the parties.

9           So you tell me what's workable understanding that  
10 there's -- ideally, it would be great to have it globally. But  
11 we have to start somewhere.

12           MR. MOLTON: Yeah, Judge. David Molton, again, for  
13 TCC1.

14           We've been thinking about a protocol, and I think  
15 we'd be able to meet and confer with the, you know, with the  
16 debtor, you know, and other interested parties, you know,  
17 including TCC2, to move that forward.

18           THE COURT: Mr. Gordon, is that a schedule that works  
19 or do you have other thoughts?

20           MR. GORDON: In my mind, Your Honor, there's two  
21 issues. One is the mediators themselves. And our view would  
22 be that the Court, based on the agreement we have, should  
23 appoint those two individuals as the mediators. In terms of  
24 the protocol, I obviously represented to Your Honor that that's  
25 something we're prepared to meet and confer with the other



1 parties about. If Ms. Speckhart wants to be involved in that,  
2 we wouldn't, obviously, say no to that. And I do think it's  
3 reasonable to expect within a week we could come up with  
4 something, or at least identify what the issues are to which we  
5 can't agree.

6 THE COURT: All right.

7 So you would be looking for the appointment as of  
8 today? Or --

9 MR. GORDON: Yes. As you know, Your Honor, we've  
10 wanted to move forward with mediation for quite a while. You  
11 know, the big issues that we were facing that were impeding  
12 that have been resolved and, you know, we know there's appeals  
13 and those appeals will go forward, but we'd like to get  
14 started.

15 THE COURT: All right.

16 Ms. Speckhart?

17 MS. SPECKHART: Your Honor, it is our perspective  
18 that one week's time is a very short window, and an appropriate  
19 period in which we should be able to have the conversations  
20 with our clients about the very substantive mediation that  
21 they're about to embark on, and at least be able to diligence  
22 the identity of the mediator so that they can be comfortable  
23 with who will be conducting the proceedings. And we will be  
24 prepared to move as fast as is necessary to facilitate a  
25 consensual result at least on the protocol at this point.



1 THE COURT: All right. Thank you.

2 Okay. Mr. Russo, was he one of the nominees for the  
3 FCR?

4 MR. GORDON: He was, Your Honor. He was one of our  
5 nominees.

6 THE COURT: I think the Court is going accede to the  
7 start of a consensus. And we can build on that. Certainly,  
8 looking to have the mesothelioma group comfortable with the  
9 mediation process. But I see no prejudice as to getting  
10 mediators onboard now. Composition can change going forward.  
11 Issues can change, protocols can be adopted. But if we -- I'm  
12 certainly comfortable with Judge Schneider. I've reviewed  
13 Mr. Russo's -- I have his resume here. I reviewed him as a  
14 potential FCR. And if I have a group representing 38,000  
15 claimants comfortable, I think that's a start.

16 So I'm going to authorize the appointment of those  
17 individuals, Judge Joel Schneider and Gary Russo, as mediators  
18 going forward, without prejudice and under reservation of  
19 rights of others to weigh in if there are others or if there  
20 are issues that arise with their appointments. But I'll ask  
21 the debtor to circulate an order.

22 All right. Before we get to the contested retention  
23 applications, are there any other issues?

24 MS. SPECKHART: Your Honor, just one point of  
25 clarification. Consistent with the reservation of rights that



1 you just provided in respect to the identity of the  
2 mediators --

3 THE COURT: Yes.

4 MS. SPECKHART: To the extent that there is a gating  
5 issue after we have the chance to confer with our clients, is  
6 that something that you would like us to raise with Your Honor  
7 within the next seven days --

8 THE COURT: Yes.

9 MS. SPECKHART: -- so that you could conduct a  
10 telephonic hearing on the one-week schedule?

11 THE COURT: Yes. I mean, if something is  
12 problematic, not simply a preference, but a real problem, then  
13 certainly, I want it brought to the Court's attention.

14 MS. SPECKHART: Okay. We'll do that as soon as  
15 possible.

16 THE COURT: All right.

17 MS. SPECKHART: Thank you.

18 THE COURT: Thank you.

19 Mr. Gordon?

20 MR. GORDON: Your Honor, Greg Gordon, again, on  
21 behalf of the debtor.

22 I think Mr. Defilippo just sent me this note, which  
23 is a good one. He wanted to ask me to clarify that in coming  
24 up with these additional candidates for FCR, we're presuming it  
25 doesn't really make sense for anybody to propose someone who's



1 been stricken.

2 THE COURT: Well, if one side or another has struck,  
3 whatever the proper grammar is, a candidate, I think it -- I  
4 can't see all of the sudden a revitalization in that candidate.  
5 So I think we know who's been struck and I would say there are  
6 sufficient quality candidates out there to consider.

7 MR. GORDON: And then, the only other thing, Your  
8 Honor, was we filed, I think relatively late last night, some  
9 papers with respect to a securities action, and --

10 THE COURT: Yes.

11 MR. GORDON: I'm sorry. Part of that request  
12 included a TRO and a request to schedule a hearing in fairly  
13 short order on that, so I did want to bring that up at some  
14 point.

15 THE COURT: My courtroom deputy is probably working  
16 on sending out a scheduling for Thursday at 10:00 a.m.

17 MR. GORDON: Okay. Thank you, Your Honor.

18 THE COURT: Thank you. On the initial TRO.

19 All right. Turning to the agenda, the following  
20 matters are being, while contested, are being adjourned: the  
21 application of Houlihan Lokey -- These are all being adjourned  
22 to the March 30th hearing. -- the application of FTI  
23 Consulting, the application of The Brattle Group, as well as  
24 the motions for stay relief or motion seeking confirmation that  
25 the stay doesn't apply with respect to certain insurance



1 coverage. So those matters are being carried to the 30th.

2 There is the issue -- before we get to the matters  
3 going forward today, there are three contested retention  
4 applications for Counsel for TCC2, the Sherman Silverstein  
5 firm, which I think an order had been entered inadvertently,  
6 the Cooley firm, and Waldrep Wall. I guess my question is,  
7 first of all, are the objections simply -- Mr. Sponder, are  
8 they U.S. Trustee objections?

9 MR. SPONDER: Thank you, Your Honor. Jeff Sponder  
10 from the Office of the United States Trustee.

11 Your Honor, we've worked out our issues with all of  
12 the three law firms and certifications -- supplemental  
13 certifications have been filed on the docket.

14 THE COURT: So is there any reason not to approve  
15 those retentions?

16 MR. SPONDER: The United States Trustee doesn't have  
17 reason, but I also think that the debtor had an objection on  
18 file, so.

19 Thank you, Your Honor.

20 THE COURT: Mr. Gordon? I mean, we recognize that by  
21 April 12th, there may not be a TCC2, but I hate to have these  
22 just lingering out there because then, we have to extend and  
23 protect them for any work done from now through April 12th, the  
24 same issue we had before.

25 MR. GORDON: That's right.



1 Greg Gordon on behalf of the debtor.

2 We had objected, Your Honor may recall, and I can't  
3 remember all the exact details. Because of the uncertainty  
4 with the Committees and the potential that based on the outcome  
5 of the issue of the two Committees, that there was arguably  
6 duplication among these Counsel. At the same time, you know,  
7 we recognize that these Committees have carried forward. It's  
8 certainly not, from our perspective, an issue of whether they  
9 should be paid or not.

10 It's just a matter of what to do with them at a time  
11 when the ultimate status of these Committees hasn't been  
12 determined. So I think we feel if there's separate Committees,  
13 it's proper. But, you know, the Court's -- this is sort of  
14 metaphysical to me, you know. The Court's ruling was it was  
15 never proper to have these two Committees appointed in the  
16 first place.

17 And so, it's a long way of saying, I guess from my  
18 perspective, there would probably be a way to fashion an order  
19 that fits the unusual circumstances we're in and doesn't  
20 prejudice our position with respect to the two Committees or  
21 the other side's position with respect to the two Committees.  
22 I think if we could do that, at least speaking for me, we'd be  
23 comfortable with that.

24 THE COURT: Okay. Thank you.

25 I think it does make sense to enter orders approving



1 the retention, maybe with a reservation of rights in the event  
2 TCC2 no longer, if and when it no longer exists, that the  
3 retention is discontinued, or something to that effect.  
4 Unless, of course, and I understand there's appeals. Nothing  
5 is easy in this case.

6 (Laughter)

7 MS. SPECKHART: Nothing is easier, Your Honor. But I  
8 think, just as a logical consequence of TCC2's potential or  
9 eventual dissolution, the order would terminate on its own and  
10 we can make sure that that's clear. But I think I speak for  
11 all of the three referenced firms. First of all, we appreciate  
12 the debtor's accommodation and acknowledgment of reality and  
13 also Mr. Sponder's work with us in resolving all the  
14 outstanding objections.

15 But at the same time, I think that all three of us  
16 have held off in filing any monthly fee statements, just  
17 because we didn't want to be presumptuous or offend the Court  
18 about the status of our retention. So I appreciate that you've  
19 taken this up today and we'll make sure that the order conforms  
20 to your directive.

21 THE COURT: Great. So we're going -- those are  
22 Docket Numbers 1079, 1080, and 1091, and the Court will await  
23 language orders that have been circulated.

24 (Counsel is conferring off record)

25 MS. SPECKHART: Okay. Thank you.



1           Your Honor, Mr. Abramowitz helpfully reminded me that  
2 there is a related issue of the typical submission of  
3 reimbursement of expenses for Committee members. I think that  
4 those are handled in a way that's usually connected to the  
5 monthly fee statements of lead counsel or local counsel. I'd  
6 have to check the procedures in this Court. But we just want  
7 to make sure that we're okay to go ahead and process those in  
8 connection with Your Honor's ruling on the retentions  
9 themselves.

10           THE COURT: Yes, you are.

11           MS. SPECKHART: Thank you, Your Honor.

12           THE COURT: Thank you. Thank you, Mr. Abramowitz.

13           All right. Let's get to the main event.

14           Jones Day fee application -- on the fee  
15 application -- Jones Day retention application. We're still at  
16 that stage.

17           Mr. Gordon.

18           MR. GORDON: Greg Gordon, on behalf of the debtor,  
19 Your Honor.

20           So we are going completely digital today. In other  
21 words, we had a miscommunication in terms of hard copies of the  
22 PowerPoint presentation, so we've emailed it around. Everybody  
23 has it. We're happy to print it later for Your Honor, if you  
24 want it. You should have it by email as well.

25           THE COURT: Is it --



1 MR. GORDON: And of course, it's going to come up on  
2 the screen.

3 THE COURT: Is this different from the PowerPoint  
4 that was initially provided?

5 MR. GORDON: It's a little different because it's  
6 been updated.

7 THE COURT: All right.

8 MR. GORDON: But it's --

9 THE COURT: Well, then, I'll look at it on the  
10 screen.

11 MR. GORDON: But our apologies for that. That was  
12 just a bit of a miscommunication.

13 Okay. Next slide please.

14 And the next. And the next, please. Okay.

15 So, Your Honor, these next couple of substantive  
16 slides, just sort of, I think, establish the basics, or the  
17 basic facts that, in our view, make clear that there's no  
18 actual conflict. There's no potential conflict and, in effect,  
19 there's no reason to disqualify Jones Day.

20 So I think, and I know some of these things, maybe  
21 all of them, the Court's already well aware of, but I think the  
22 record is very clear that on October 12, 2021, our  
23 representation of J&J in connection with the corporate  
24 restructuring terminated, and at the same time, our  
25 representation of the debtor began. And, of course, as Your



1 Honor knows, the debtor did not even come into existence until  
2 the time that the corporate restructuring was effectuated.

3 And this is an important fact, because when you look  
4 at the standards under 327, the focus is, you know, the verbs  
5 are in the current tense, the focus is on whether there's an  
6 existing conflict. And a lot of the focus of the objectors is  
7 on the representation prior to the time when we became counsel  
8 for LTL. And so it's not a concurrent representation issue.

9 As the slide says, there was simply no overlap.  
10 These were successive representations. One ended, the next one  
11 followed. In terms of J&J, and we've heard a lot about our  
12 supposed representation of J&J, I think the record's clear we  
13 did not represent -- the firm does not represent J&J in  
14 connection with this Chapter 11 case. It does, however,  
15 represent J&J and matters unrelated to the case, and I tried to  
16 provide through my declarations in support of the application  
17 some detail on that. And, in part, I think that was in  
18 response to the U.S. Trustee who had raised some questions  
19 about the extent and some additional detail on the types of  
20 matters.

21 And as my declaration reflected, those matters are  
22 largely intellectual property matters. And the other thing I  
23 think my declarations made clear, that from the standpoint of  
24 the firm, generally, the amount of fees was very, very small on  
25 a relative basis. Less than, I think one half of 1 percent of



1 the firm's fees in each of the 10 years leading up to the  
2 bankruptcy filing.

3 Next slide please.

4 Next slide.

5 Now, again, I know Your Honor's very familiar with  
6 the funding agreement. I won't spend much time on this. And,  
7 in fact, Your Honor spent a fair amount of time on this in your  
8 opinion. But the funding agreement to us is very key, also for  
9 purposes of the Jones Day retention application, because from  
10 our perspective, it shows or establishes the alignment of the  
11 parties that are involved here. The alignment of LTL with New  
12 JJCI, the alignment of LTL with J&J.

13 And I should say, by the way, that, again, I think  
14 the record's clear, we don't represent JJCI. We never have.  
15 And that's another reason why there's not a concurrent  
16 representation problem. But, again, Your Honor is well  
17 familiar with the funding agreement. This is obviously a huge  
18 benefit to this estate.

19 In fact, it seemed to go up in the minds of TCC2,  
20 primarily during the dismissal hearing, when they argued that  
21 there was an absence of financial distress at LTL, primarily  
22 because of the funding agreement. I mean, there's literally no  
23 material conditions on the requirement of funding by both New  
24 JJCI and J&J.

25 Of course, as Your Honor knows, it's not a loan.



1 There's no obligation to repay. And, you know, I think it's  
2 important what Your Honor concluded with respect to the funding  
3 agreement, which is down at the bottom of the slide, which is  
4 the funding agreement between the debtor on the one hand and  
5 J&J and New JJCI on a joint and several basis on the other is  
6 not intended to and is unlikely to impair the ability of talc  
7 claimants to recover on their claims. And, you know, that to  
8 me undercuts many of the arguments the objectors have advanced  
9 as to why Jones Day has an actual conflict that warrants  
10 disqualification.

11 Next slide, please.

12 And next.

13 So just starting with some of the basics here, Your  
14 Honor, you know, debtor's choice of counsel is entitled to the  
15 great deference. That comes from the Enron case. The court  
16 there also made clear that, you know, disqualification really  
17 shouldn't be based on conjecture or speculation or perhaps  
18 inferences about the situation. And I would submit, Your  
19 Honor, that much of what you're going to hear from the  
20 objectors is speculation about things that could potentially  
21 happen down the road and things, frankly, that there's no  
22 reason to expect they would ever happen.

23 Next slide, please.

24 So the analysis, in our view, and this comes from the  
25 Marvel case, which I know Your Honor is well familiar with,



1 really breaks down into three pieces in our minds. One,  
2 whether there's an actual conflict which would require  
3 disqualification in the absence of some alternative to  
4 disqualification.

5 The second is a potential conflict. And there, I  
6 think it's clear that courts have wide discretion to decide  
7 what to do in the event of a potential conflict. And they have  
8 wide latitude to approve retentions, notwithstanding the  
9 potential for a conflict.

10 And then there's this idea of an appearance of  
11 conflict. And I would suggest that much of the objections that  
12 you've seen and will hear today really come down to an  
13 appearance of conflict. And we think it's clear in the Third  
14 Circuit that's not a sufficient basis to disqualify counsel.

15 Next slide, please.

16 In the supplemental objection that was filed within  
17 the last week or two, there was a suggestion that the standard  
18 is something different than what we believe the Third Circuit  
19 prescribes the standard to be. And that was a standard to the  
20 point of the counsel has to be aloof from all connection with  
21 the debtor or its management.

22 So think about that, that you would represent a  
23 debtor but have to be completely aloof from the debtor or its  
24 management. And then this other "like Caesar's wife," you have  
25 to be above suspicion. And Collier was cited for that, and the



1 Granite Partners case out of the Southern District of New York  
2 was cited for that.

3           And if you take a look at Collier, you see that this  
4 was taken completely out of context because the Collier cite is  
5 talking about a situation where counsel is being retained by a  
6 trustee, not by a debtor. And the point that was being made  
7 was, if you have a Chapter 11 trustee who's being brought in as  
8 an independent party, then the counsel should be the same. And  
9 we would submit, that's not the situation here where you have a  
10 debtor-in-possession.

11           And Granite Partners was the same thing. It was also  
12 counsel for a trustee. And, moreover, in that case, the court  
13 found that there was inadequate disclosure about the extent of  
14 the council's involvement with a party that had a significant  
15 relationship to the case.

16           Next slide, please.

17           We've had some back and forth. I won't spend a lot  
18 of time over whose burden it is. We think the cases are clear  
19 that there's a shifting of the burden if the debtor has  
20 basically made its case through its filings. And we submit  
21 that we did that through the initial application with the  
22 declaration that was appended to that, and then, of course,  
23 also including the additional declarations that were submitted  
24 as well.

25           And at that point, then the burden shifts to the



1 objectors who have a substantial burden to present evidence of  
2 a disqualifying conflict. And you can see that concept about  
3 the shifting of the burden comes out of the Boy Scouts case,  
4 and also out of the Caesars case as well in the Northern  
5 District of Illinois.

6 Next slide, please.

7 So, this again, this slide, Your Honor, just  
8 reinforces what I said before, which really focuses more  
9 specifically on what Section 327 provides. And the BSA quote,  
10 I think, is significant where the court says "The Third Circuit  
11 has instructed that professional holds a prohibited adverse  
12 interest where that professional holds or represents interests  
13 in competition with the debtor that would actually, as opposed  
14 to speculatively, impair its service as an estate fiduciary."

15 So, again, there's that focus on a current  
16 representation and one that's competing against the  
17 representation of the debtor. And then, of course, you can see  
18 from the Section 327 language itself, it's written in the  
19 current tense. And, again, in this case, Jones Day has no  
20 concurrent representations. The debtor is the only party that  
21 we represent in connection with the case. The only other  
22 representations we have are of J&J in matters that are  
23 completely unrelated to this case.

24 Next slide, please.

25 So these are kind of stating some obvious points.



1 Obviously, LTL is not J&J. It is important to recognize that  
2 J&J has its own counsel on this case. Ms. Lauria is here  
3 today. Your Honor acknowledged here earlier. New JJCI has its  
4 own counsel on this case. That's Ms. Lauria, as well.

5 And the idea that you have successive  
6 representations, where one terminated and another began, is not  
7 a basis to find any kind of conflicting present interest.

8 And, you know, it's been suggested that the  
9 representation of the debtor is a continuation of its  
10 representation of J&J. And we would submit that's not the  
11 case. We had a specific representation of J&J in connection  
12 with the restructuring. Once that was completed, the  
13 restructuring occurred and we immediately then became counsel  
14 for LTL in connection with the bankruptcy case.

15 Next slide, please.

16 The -- you know, our brief, particularly our reply  
17 brief, I think all of them have many, many cases that we've  
18 cited. We've just highlighted a few cases we've cited in  
19 support of our position.

20 But you can see in Enron, that was a situation where  
21 there was an effort to disqualify, I think it was Milbank,  
22 based on work it had done and transactions prior to the case.  
23 And the Court found there that even though those transactions  
24 were subject to investigation, there was no basis to  
25 disqualify.



1 And in the American International Refinery case, it  
2 was a similar situation based on pre-petition work and where  
3 there was an allegation that, based on that work, there was an  
4 inability to offer objective device -- advice, I'm sorry, to  
5 the debtor in the bankruptcy case. Next slide please.

6 You know, the Marvel case, just to go back over this,  
7 it makes clear that disqualification is not appropriate based  
8 on an appearance of impropriety. And the Court, I think, was  
9 very practical in reaching that ruling, finding, you know, if  
10 we were to allow that, you can imagine what kinds of arguments  
11 could be advanced in literally every case against counsel  
12 retained by a debtor.

13 And of course, and I'll come back to this, where you  
14 have a potential conflict, the question there, whether it's a  
15 conflict that's likely to occur or whether it's remote, and if  
16 it's remote, that's not a basis for disqualification either.  
17 And that's -- that comes out of the Jade case, which is an  
18 unreported Third Circuit case.

19 Next slide, please.

20 This slide just provides a little more detail on  
21 potential conflict and when a potential conflict might get to  
22 the point of -- of warranting a disqualification. But the idea  
23 here is that a potential conflict exists where an attorney does  
24 hold or represent a conflicting interest. So you're actually  
25 representing somebody who has a conflicting interest, but the



1 attorney's not likely to be in a position to favor that  
2 interest over the debtor's interest.

3           So you've actually identified something, a  
4 representation that's potentially problematic, and then the  
5 question turns to, okay, so I see there is a potential because  
6 of the -- the different situations of the two parties, but is  
7 that potential likely to occur or is it remote? And again,  
8 from Marvel, an apparent conflict isn't enough.

9           And again, if it's remote, that's not enough either,  
10 again from the Jade case.

11           Next slide, please.

12           Okay. These cases -- and again, there's others that  
13 we've cited. This is Muma Services, 22 Acquisition, Hurst  
14 Lincoln Mercury. They all generally stand for the interest  
15 that -- or the -- or for the proposition that disqualification  
16 isn't appropriate where interests are aligned.

17           So even if you represent a third party outside of the  
18 case, out of a Chapter 11 case, who has some interest in the  
19 case, if the interests are aligned, there's no basis for  
20 disqualification, there's no basis for concern.

21           And you can see here one involved a -- and by the  
22 way, these were concurrent -- again, concurrent  
23 representations, which we don't even have at this point. You  
24 have one with a shareholder, involving a shareholder,  
25 concurrent representation, but the parties were united in



1 interest. That's the Hurst case.

2           You had another with a debtor and a secured lender  
3 and also a consulting firm. I think it was partially owned by  
4 the secured lender, as I recall. And again, the Court was okay  
5 with that based on the -- based on the conclusion that the  
6 parties' interests were aligned.

7           Next slide, please.

8           And here, we would submit, Your Honor, that the  
9 record establishes that the interest of the debtor, J&J and New  
10 JJCI, are fully aligned. They all share an interest in an  
11 equitable and efficient resolution of talc claims in this case  
12 through a Chapter 11 plan.

13           You've got J&J and New JJCI are obligated to provide  
14 backup funding under the funding agreement. Your Honor is  
15 aware of the fact that J&J and New JJCI have agreed to provide  
16 a two -- provide \$2 billion as a prepayment under the funding  
17 agreement to go into a qualified settlement fund for the  
18 exclusive benefit of -- of claimants in this case.

19           And there's just -- there's no dispute under the  
20 funding agreement. There's nothing the objectors can point to,  
21 and there's no reason to believe that one will occur. And I  
22 thought Your Honor's opinion had a very commonsense point about  
23 that. It would just be nonsensical to accept the notion that  
24 J&J and Old JJCI would bear the brunt of public and judicial  
25 scrutiny, as well as the time and cost to implement this



1 integrated transaction simply to stall claimants or walk away  
2 from its financial commitments under the funding agreement.

3 And I would submit that that practical observation  
4 applies here, because, again, you're going to hear the other  
5 side argue today that we're on the opposite sides of the  
6 funding agreement, we're on opposite sides of the V, where  
7 there's conflicts between the debtor -- or potential conflicts  
8 between the debtor, J&J, and New JJCI that create problems for  
9 our retention application.

10 And I would submit, Your Honor, there's just no basis  
11 for any of that. That's sheer speculation, and it's  
12 speculation that, frankly, is not believable, based on where we  
13 stand today and based on the fact that there have been no  
14 defaults under the funding agreement. Funding is being  
15 provided as contemplated. And we as counsel for the debtor see  
16 no reason to believe that that will ever change.

17 Next slide, please.

18 So I kind of foreshadowed this point, I think. The  
19 other is, you know, obviously, we've had arguments like this  
20 come up in other cases, not necessarily in the retention  
21 context, but in the other cases in North Carolina, lots of  
22 concerns raised by the Plaintiff's Bar about potential defaults  
23 under the funding agreement and the like. And there hasn't  
24 been a single instance in any of those cases where there's ever  
25 been a default either.



1           And you know, the last point, which I'll come back  
2 to, it's not our intention, Jones Day's intention to ever be  
3 involved if there is a dispute. And the way I've always  
4 thought about this is the concern that's fundamentally being  
5 raised is that LTL is a subsidiary ultimately of J&J. It's a  
6 subsidiary of New JJCI. And whether Jones Day is counsel, or  
7 whether some other firm is counsel, it's always struck me as  
8 highly unlikely that either a court or a committee would want  
9 counsel for the debtor involved in suing its ultimate parent or  
10 even its intermediate parent. And that's one of the reasons I  
11 made the offer I did in connection with the dismissal hearing.

12           And I think we even said it in our papers, that we  
13 would expect if there was a breach at some point, that we  
14 wouldn't be involved in that. If there was some reason to  
15 pursue litigation against the parent, or against any of the  
16 affiliates, which we can't envision at this point, that we  
17 wouldn't be involved in that. I think everyone would agree to  
18 that, I suspect.

19           Next slide, please.

20           So, Your Honor, this is just an attempt to capsulize  
21 an issue that came up a little bit later in the briefing, which  
22 was the move from 327 into, well, let's look at various rules  
23 of professional conduct. And the argument was made that this  
24 representation violates various of those rules.

25           And from my reading of the cases, sometimes courts



1 look at these rules, sometimes they don't. I don't think it's  
2 mandated, as best I could tell, under the Third Circuit  
3 authority, but it sort of doesn't matter in this case from our  
4 perspective, because we don't think there's any violation of  
5 any -- any of the rules.

6 And you've got -- the ones that are primarily raised,  
7 yeah, these are model rules, and then you can take them across  
8 to New Jersey and the like, and they're all pretty much the  
9 same. 1.7(a), 1.8(b), and 1.9(a), in pretty much all of those,  
10 the evidence shows that there's no issue because Jones Day is  
11 not representing the debtor directly adverse to another client.  
12 Jones Day is not representing any client in a matter directly  
13 adverse to the debtor.

14 And there's no limitation on Jones Day's  
15 representation of its work here based on work it's done for  
16 other clients. And again, that's largely because of the  
17 alignment of interests of the parties. And again, we don't  
18 even represent New JJCI. And then there's more detail  
19 underneath which I won't go into, just taking these rule by  
20 rule.

21 But again, if you look at these, they're -- they're  
22 largely rules that are not surprising in the sense that they're  
23 raising issues when you have an actual conflict. They  
24 literally, where you're actually on both sides of the same  
25 issue with two clients at the same time, or you've put yourself



1 in a position where your representation of one client is  
2 limited by your representation of the other. You just can't go  
3 there based on the services you're providing to the other.

4 And again, these are concurrent situations largely  
5 other than a 1.9(a), which talks about a former client, which  
6 really isn't applicable here because of the fact that we have  
7 successive representations. We've got successive  
8 representations.

9 Okay, let's go to the next slide.

10 And I'm just going to go through these very quickly.  
11 The only reason we have these slides from the record is there  
12 was a suggestion in the latest supplemental brief that one of  
13 the reasons we should be disqualified was the fact that there  
14 was evidence in the dismissal hearing that suggested that our  
15 board really was not given sufficient information even to make  
16 the decision about a bankruptcy filing.

17 And I think that was sort of suggested it was  
18 indicative all of this is Jones Day working for J&J and not for  
19 the debtor. And so these -- yeah, there was a focus on the  
20 fact that the employees are secunded, but overlooking the fact  
21 that Mr. Kim, for example, as you know, is secunded full-time  
22 to the -- to the debtor. Our client is LTL. Our primary  
23 representative we report to is Mr. Kim.

24 Next slide, please.

25 And again, I'm not going to spend much time on these,



1 but I think there was significant testimony during the  
2 dismissal hearing that suggested that, in fact, the Board had  
3 sufficient information to -- to decide -- make the decision to  
4 file for bankruptcy.

5 Next slide, please.

6 Again, here's Mr. -- testimony from Mr. Kim talking  
7 about the preparation he did and the information he conveyed to  
8 the Board and what his intentions were.

9 Next slide, please.

10 And kind of more of the same here. And this was  
11 specifically responding to the comment that the Board were just  
12 mushrooms and really had no will of their own, no information,  
13 they were just kept in the dark and were being manipulated by  
14 J&J.

15 Next slide, please.

16 The latest supplemental brief included some time  
17 entries, which I think were included for the proposition of  
18 showing that our real client is J&J, and we would just suggest,  
19 having looked at those entries, they show no such thing. They  
20 just show that, in fact, unsurprisingly there have been  
21 communications with J&J and affiliates in connection with the  
22 case that will also show -- I think virtually every one showed  
23 that White & Case was involved in those calls representing  
24 those entities as well, and Mr. Kim was involved in most, if  
25 not all, of those time entries as well.



1           And again, I think you would expect that there would  
2 be communications among parties whose interests are aligned or  
3 have a common interest, and particularly ones that are part of  
4 a corporate enterprise like we have here.

5           Next slide, please. Next slide.

6           So I think ultimately, what much of the objections  
7 devolve into is allegations that the restructuring essentially  
8 effectuated a fraudulent transfer, which I would say, again, as  
9 I pointed out a couple of weeks ago, it seems inconsistent with  
10 their arguments that were being made about LTL not being  
11 financially distressed. But nonetheless, that's largely what  
12 it -- that devolves into.

13           And again, I think the Court's rulings in its opinion  
14 on dismissal basically belie those -- those arguments. And to  
15 us, you know, to suggest that -- that an allegation of  
16 fraudulent transfer in the face of an opinion that would seem  
17 to largely suggest there is no basis for a fraudulent transfer,  
18 just can't be a basis to disqualify a law firm.

19           I mean, that's arguably at best a potential conflict  
20 that is decidedly remote, based on the record. You know, if  
21 there's a risk at all, it's decidedly remote, based on the  
22 record that we have.

23           Next slide, please.

24           The other side, obviously, for this point relies on  
25 two of Judge Whitley's -- well, actually his findings of fact



1 and conclusions of law in his two PI rulings in both Aldrich  
2 and DBMP. But it's important to keep in mind that Judge  
3 Whitley made very clear that his findings were preliminary and  
4 he even acknowledged they could just be considered as dicta.

5 And again, these in my mind become much less  
6 significant in the wake of the ruling Your Honor made following  
7 an extensive hearing and a substantial record.

8 Next slide, please.

9 Then Your Honor, again, I won't spend a lot of time  
10 on this, because this is well briefed, but the cases that are  
11 largely relied on to suggest that we have a disabling conflict  
12 are cases involving a preference. You've got the First Jersey  
13 Securities, the Fleming case, and then Pillowtex, which I'm  
14 embarrassed to say I was involved in that, even though it was a  
15 really long time ago.

16 But all those -- I mean, to me, those were very  
17 different cases where there was a determination that there was  
18 a facially plausible claim, and it was a preference. And as  
19 Your Honor knows better than I do, a preference to me is a much  
20 more objective situation than -- than actual or constructive  
21 fraudulent transfer.

22 And you know, in Pillowtex in particular, the case  
23 was remanded because the Third Circuit felt like that issue had  
24 to be resolved. And I think there, the Court had a concern  
25 that we understand that the firm's willing to pay back a



1 preference if it's determined that way, but we also think, as  
2 debtor's counsel, you're potentially in a position to determine  
3 whether that litigation is even pursued.

4 And that to me is very different from the situation  
5 here, particularly where we've already said that -- that we  
6 wouldn't be involved if -- if there is a -- if this court were  
7 to find that derivative standing is appropriate, that there are  
8 colorable claims that could be asserted, again, we wouldn't --  
9 we wouldn't stand in the way of that. And Jones Day wouldn't  
10 be involved.

11 And then the -- you have this New Jersey case, the  
12 Banco Popular case, which is cited as really the only basis for  
13 saying that Jones Day itself has liability for a fraudulent  
14 transfer. And I'm sure Your Honor has read the case by now,  
15 but to us that's a very different case on a very egregious set  
16 of facts and at a very early stage in the case, and just really  
17 talking about what you could plead in the face of facts where  
18 it seemed pretty clear the attorney was in that case complicit  
19 in some misrepresentations that were made in connection with a  
20 loan.

21 Next slide, please.

22 And again, I won't spend much time on this. This  
23 came up in the more recent briefing, this Plastronics case.  
24 This was actually a Texas Divisional Merger case. And again, I  
25 think it's cited for the purpose of trying to establish that



1 Jones Day has a disabling conflict because we did something  
2 where we were involved in a transaction that achieves something  
3 similar.

4 And I would just submit that the Plastronics case is  
5 easily distinguishable. Again, a very egregious set of facts  
6 where a contract was entered into with respect to payment of  
7 royalties and a divisional merger was subsequently undertaken,  
8 I think, to basically undercut the agreements in that contract,  
9 to directly undercut them.

10 Next slide, please.

11 And then there was the suggestion that we have a  
12 disabling conflict because we have a business interest in a  
13 successful outcome. And I would submit, even if that were  
14 true, that's a positive, not a negative. And we've cited to  
15 the Rules of Professional Conduct that, you know, we're to  
16 represent the debtor with commitment and dedication to its  
17 interests and with zeal and advocacy on its behalf.

18 And this debtor strongly desires to resolve this case  
19 as quickly as possible and to reach a trust that would pay out  
20 -- pay out equitable amounts to similarly situated current and  
21 future claimants. And that's what our -- I hope our  
22 representation has demonstrated to date, that that's what we're  
23 -- that's not only what LTL is committed to, but what the  
24 debtor -- I'm sorry, what Jones Day is committed to as well.

25 Next slide, please.



1           This is largely to show that the criticisms just  
2 seemed to -- to devolve -- the criticisms in terms of actions  
3 undertaken in the case to date just seemed to devolve down to  
4 criticisms that we're not doing what the Plaintiffs want us to  
5 do.

6           And so the fact that we supported a divisional  
7 merger, well, I think as Your Honor found, that was a valid  
8 state transaction. No one's come up with a basis to argue that  
9 it was done in violation of Texas law or any other law. They  
10 focused on the venue, but, you know, as we argued to Judge  
11 Whitley in North Carolina without success, we thought that was  
12 an appropriate forum based on efficiencies that would result  
13 because of its prior knowledge and experience with these cases.

14           They've taken issue with the fact that we requested  
15 the injunctive relief we did, which Your Honor granted, but  
16 that's -- that's threshold relief in these mass tort cases.  
17 It's been granted in most cases where it's been needed, if not  
18 every case where it's been needed.

19           They took issue with the fact that we would argue  
20 that there was an indemnity between the debtor and J&J and  
21 JJCI, but as Your Honor knows again from the evidence, that  
22 went all the way back to transactions that occurred in 1979.

23           They took issue with the fact that we moved to  
24 appoint an individual as FCR. Again, that was all in  
25 furtherance of having this case move forward. As Your Honor



1 knows from prior hearings, we -- our goal was to get an FCR in  
2 place as soon as possible, get the mediation as soon as  
3 possible. And that's all consistent with the interests of the  
4 debtor.

5 And then, of course, the qualified settlement fund,  
6 there was criticism about that and there continues to be, as I  
7 understand it, objections to that, even though from our  
8 perspective, that's nothing but a benefit to the claimants and  
9 that -- you know, that matter will be heard later.

10 Next slide, please.

11 So in some respects, I guess the -- you know, the  
12 question is who's trying to gain an advantage here and what is  
13 -- what is happening? Again, we've made clear that in terms of  
14 potential fraudulent transfer litigation, if there are any --  
15 if there are any basis to do that, we won't be involved in  
16 that.

17 The other side has already said very forcefully to  
18 Your Honor that they intend to pursue derivative standing.  
19 And so that issue will be teed up. If -- if we were to choose  
20 to object to that on the basis that the claims aren't  
21 colorable, whatever they might be, Jones Day would not be  
22 involved in that. Mr. DeFilippo can handle that, and we'll  
23 just stay out of it.

24 And so, you know, given that -- given those  
25 circumstances, and given the fact there's not a concurrent



1 representation that creates a problem, given the fact there's  
2 not a potential conflict that's anything other than completely  
3 remote if it exists at all, then what is -- what purpose would  
4 be served by disqualifying the firm?

5 And, you know, that in my mind raises the question of  
6 whether this is just a litigation tactic to try to shunt the  
7 firm aside and bring someone else in.

8 Next slide, please.

9 There was also an argument made under Rule of  
10 Professional Conduct 3.7 that we should be disqualified  
11 because we would be a witness. And, you know, the one thing I  
12 would say to this is, boy, if this were accepted as a basis for  
13 disqualification, you could probably gen up an argument -- this  
14 argument up in virtually every case, given the fact that  
15 lawyers in every case pretty much are representing a debtor or  
16 a party in connection with the bankruptcy prior to the filing.  
17 And you just have to come up with some dispute and say, I would  
18 plan to depose the law firm or take discovery from the law  
19 firm, so I would submit this isn't an appropriate basis.

20 And it's particularly not because, you know, were we  
21 representing J&J in connection with the restructuring? Yes.  
22 Would that make us a witness? No. I mean, we were serving as  
23 counsel. That's the role we were serving in. Our advice would  
24 be privileged or otherwise protected and not discoverable.

25 And to us that just would not be at all a basis to



1 argue that there should be a disqualifying -- or  
2 disqualification of the firm.

3 Next slide, please.

4 Alternatives. Next slide.

5 So, because of this concern about the corporate  
6 restructuring, should we be disqualified? The answer is no. I  
7 mean, this is effectively, again, an issue that's moot based on  
8 the position we've taken.

9 And obviously, I've just -- we provided the quote of  
10 part of what I said to Your Honor at the conclusion of the  
11 dismissal hearing with respect to either an examiner or  
12 derivative standing.

13 Next slide, please.

14 You know, Caesars, the Court recognized there were  
15 better solutions than disqualification that should be  
16 considered. And obviously the reason for that is because I  
17 think courts try to have the debtor -- or try to permit a  
18 debtor to use the counsel of its choice, unless there's  
19 something that's so egregious that that's not appropriate.

20 We -- we try to make clear, both in our pleadings and  
21 in the additional declarations, one from Mr. Kim, one from Mr.  
22 Haas on behalf of J&J, that all are basically supportive of or  
23 in agreement that there could be conflicts counsel to step in,  
24 in the event there's ever any kind of conflict that comes up in  
25 the future, which again, we don't foresee. But we just wanted



1 to cover that off that our client, LTL, and J&J has been the  
2 focus of so much of the substance of the objections. They've  
3 both agreed that that's not an issue. They're okay with that.

4 Next slide, please.

5 And, of course, a reservation of rights is also  
6 appropriate. And we've seen a reservation of rights used in  
7 the Paddock case. And it was used in the three North Carolina  
8 cases as well, with basically the concept being that you have  
9 the right to seek -- any appropriate relief in the future is  
10 fully preserved, as are the debtor's corresponding rights.

11 So in other words, if something comes to light in the  
12 future, you're not foreclosed from raising it in the future.  
13 And part of that, you know, I think at least I can say in the  
14 North Carolina cases, the debtors were willing to agree to  
15 that, because we -- we could not foresee that ever happening.

16 In all of these cases, we've attempted to be very  
17 transparent about what we've done. We've tried to be very  
18 fulsome with the disclosures we've made, not only in terms of  
19 our representations, but also in terms of the transactions that  
20 were done.

21 And so I think we're comfortable based on that, that  
22 a reservation of rights is appropriate. It's probably the law  
23 anyway, that if something were to come to light later that  
24 showed there was a problem that it could be brought up later,  
25 but that could be utilized here as well. And we're -- that's



1 -- that's perfectly acceptable to us to have similar language  
2 in a retention order here.

3 Next slide, please.

4 So just to sum up, the debtor's choice of counsel is  
5 entitled to deference. We would submit the objectors have not  
6 met their burden to show that we should be disqualified. We  
7 think the record is clear that the debtor has no actual or  
8 potential conflict within the meaning of Section 327. Among  
9 other things, the interests of the debtor, J&J, New JJCI,  
10 they're all aligned.

11 You know, in these other cases in North Carolina,  
12 we've not been disqualified. It hasn't even been argued  
13 before. And, you know, here, we try to make it clear that  
14 conflicts counsel is available. We're okay with that. We'll  
15 stay out of issues that we think potentially create a conflict  
16 for us.

17 Also, as I've indicated, the reservation of rights, a  
18 language we're comfortable with. And so we would submit that  
19 it makes sense and it would be beneficial to the debtor and for  
20 the estates to have the company move forward with its chosen  
21 counsel, Jones Day, and we would ask Your Honor to approve our  
22 retention application.

23 THE COURT: All right. Thank you, Mr. Gordon.

24 MR. GORDON: Thank you.

25 THE COURT: Mr. Pfister.



1 MR. PFISTER: Still morning. So good morning again,  
2 Your Honor.

3 THE COURT: Still morning.

4 MR. PFISTER: Rob Pfister from the Klee Tuchin firm  
5 on behalf of Aylstock Witkin.

6 I have three preliminary points and then two main  
7 points. Preliminary notes, number one, I'm glad I lost back in  
8 December and that Jones Day is getting paid for all the work  
9 they've done through the trial. This is not about whether  
10 Jones Day should be paid for the work that they have done; they  
11 certainly should. And so that was a battle that I lost and --  
12 and pleased I did.

13 Second, no issues certainly from me. I won't speak  
14 for the other objectors. But regarding this, you know, sliver  
15 of work that Jones Day has done on behalf of J&J regarding IP  
16 and other matters where Jones Day was apparently their longtime  
17 counsel in certain of those matters, I don't view those as --  
18 as an issue.

19 And then the third preliminary point, I'm not going  
20 to deny that this court's rulings on February 25 are something  
21 of an earthquake in many respects, but at least as to this, in  
22 terms of changing the landscape of what we're arguing. So I'm  
23 certainly not going to go into certain other points that had  
24 they -- had the rulings come out differently that we might  
25 otherwise be talking about.



1           So with those preliminaries, let me make my two main  
2 points. Under any version of the facts here, this bankruptcy  
3 case was filed for the benefit of Johnson & Johnson. The  
4 record is clear that Jones Day, which hadn't previously  
5 represented Johnson & Johnson in talc litigation matters, that  
6 was Skadden, Jones Day approached Johnson & Johnson with a  
7 solution for the talc liability that Johnson & Johnson was  
8 facing.

9           Jones Day came in with a proposal to do this Texas  
10 Two Step or divisive merger, or however you want to call it,  
11 and said, you know, here's a plan for how we can deal with  
12 this.

13           They have then proceeded from that first approach  
14 forward until, you know, through and including today, to  
15 continue to execute that plan. In doing so, I don't think  
16 there's any doubt that the benefit or the entity that is being  
17 benefitted ultimately is Johnson & Johnson.

18           That being the case -- and I don't think there's any  
19 dispute as to any of those points -- you know, the Court -- the  
20 Court in its February 25 opinion, you know, praised the  
21 debtor's transparency in saying, look, everybody knows what's  
22 going on here. Nobody's trying to hide anything. Mr. Gordon  
23 is, you know, saying the debtors are transparent.

24           Well, if we're going to be transparent, let's be  
25 completely transparent. Why are we going through the charade



1 of saying that something happened on October 12th when Jones  
2 Day allegedly got this letter from its now former client  
3 Johnson & Johnson terminating the representation and another  
4 law firm, White & Case, was hired by Johnson & Johnson and gets  
5 dragged to court for every hearing, doesn't say anything, but  
6 is here, you know, technically formally representing Johnson &  
7 Johnson.

8           You know, why -- what is the point of doing any of  
9 this? And I'll just say, you know, parenthetically, if Jones  
10 Day had approached Johnson & Johnson earlier in 2021 and said,  
11 Let's do this great Texas Two Step, had proceeded to execute  
12 everything and then had stayed counsel for J&J, this wouldn't  
13 be an issue. Then have the new debtor, the newly created, you  
14 know, LTL entity hire White & Case and, you know, let White &  
15 Case do the debtor work.

16           You know, I'm not saying the Two Step would be okay.  
17 It certainly wouldn't from, you know, from my view, but again,  
18 that's not what we're here arguing today, but there wouldn't be  
19 an issue. But what -- you know, it's just not credible to  
20 assert that on October 12th, when LTL was created, Jones Day  
21 took off its J&J hat and that is now a former representation  
22 that has been concluded and that now Jones Day is here only  
23 representing the debtor in this case and that White & Case,  
24 which again, I mean, I've been to every hearing in this case, I  
25 don't think I've ever heard them say anything, and that was the



1 party on whose behalf all of these proceedings are being  
2 carried on. That's the first main point.

3 Second and last point, this goes to Jones Day as a --  
4 you know, as a business. And we are, of course, a profession,  
5 but lawyers are also -- there's a business of law. And the  
6 fact of the matter is, again, whatever you think of the Texas  
7 Two Step, this is something new under the sun.

8 It may be as Mr. Gordon believes, you know, the  
9 greatest thing for corporate America since sliced bread. It  
10 may be not the greatest thing since sliced bread. I think Your  
11 Honor's opinions recognize that, you know, this won't be the  
12 last word on the topic and courts will continue to examine  
13 this. But nobody thinks, or nobody at least I've heard, has  
14 failed to acknowledge the reality that this is something brand  
15 new.

16 And this brand new thing has been developed by Jones  
17 Day. They have sold this to, you know, four prior courts -- or  
18 four prior clients, rather. And then again, they came to  
19 Johnson & Johnson and said, Have we got a plan for you, you  
20 know, let's do this. No other law firm has done this. No one  
21 else is filing these cases.

22 I don't know, you know, what cases may be filed in  
23 the future, but I wouldn't be surprised if Mr. Gordon's phone  
24 is ringing off the hook these days. And the fact of the matter  
25 is that Jones Day as a business has a vested interest in this



1 Two Step itself working, not in the success of the debtor LTL,  
2 but in the Two Step process itself.

3 So, you know, what does that mean? That could mean  
4 that if there are other options -- so -- so as long as  
5 everything goes according to the playbook, right, and you know,  
6 there's a settlement in the 524(g) trust, everything else  
7 confirmed, everything has gone according to the Jones Day  
8 playbook, they say, Great, it's all kosher.

9 What if at any point in the process someone wants to  
10 go off the track a little bit? What if on October 12th, after  
11 the new LTL entity was created, then it wouldn't have happened,  
12 because these are all former J&J people who are just secunded,  
13 their ultimate loyalty, ultimate interest is to J&J, but what  
14 if they did have independent advice? What if they were  
15 represented by somebody who was looking out solely for the  
16 entities' interests, right? Would the advice have been the  
17 same? I'm not sure it would have been,

18 Again, if you accept the Two Step construct that this  
19 is a way for an entity to shed liability and that, of course,  
20 the subsidiary is going to do what the parent entity wants,  
21 then yes, what they did all makes sense.

22 What if you don't accept that construct? What if you  
23 say on October 12th, Hey, you know what, I have this new  
24 entity, I have this unlimited funding commitment, you know,  
25 commitment, maybe I'll start negotiations, maybe I'll do



1 something else. The fact of the matter is we'll never know,  
2 right?

3 Same point. What if there comes a point in this case  
4 when the debtor, which, you know, has significant rights under  
5 this multi-billion dollar funding agreement, what if there  
6 comes a point when it would be beneficial for the debtor to  
7 take some position that, again, veers off the track that's been  
8 created by the law firm? Can we have any expectation that they  
9 are going to get advice in that regard? I don't think we can.

10 So again, I'm recognizing in my argument the impact  
11 and effect of the Court's rulings on February 25. But if we're  
12 going to be transparent, let's be transparent. Why are we  
13 going through this charade? And maybe in the next Texas Two  
14 Step, Jones Day will just represent everybody throughout the  
15 entire case. It will represent the parent, it will represent  
16 the debtor, it will represent, you know, settlement trustee. I  
17 mean, you know, who knows? It could represent everybody.

18 But there's a reason that they at least tried to  
19 paper the file with, On October 12th, your representation has  
20 concluded and you are now a former client.

21 It's just not credible, Your Honor. And that's all I  
22 have. Thank you.

23 THE COURT: All right. Thank you, Mr. Pfister.  
24 Mr. Jonas.

25 MR. JONAS: Good morning, Your Honor.



1 THE COURT: Good morning.

2 MR. JONAS: Jeff Jonas from Brown Rudnick for TCC1.

3 Your Honor, let me just start by saying that I have  
4 great respect for Mr. Gordon and Ms. Brown and their firms.  
5 Our retention objections are not in any way attacks on those  
6 firms. Rather, they're based on the facts and the law as we  
7 see it. And we believe the retentions -- and I'll first  
8 address of course only the Jones Day retention, but based on  
9 the facts and the law, we believe the retentions are not  
10 appropriate.

11 And Your Honor, I also appreciate the Court's ruling  
12 on the motions to dismiss. And that said, you know, the ends  
13 don't justify the means. That is, notwithstanding your  
14 rulings, these retentions have to be examined independently.

15 And with that, Your Honor, I'll just say there --  
16 there's been -- I'll be brief today. There have -- we've filed  
17 a number of -- a number of pleadings, including some  
18 substantial layout of the cases and the facts as we see it and  
19 references to the trial and -- and the record.

20 And so I won't repeat any of that as set forth in our  
21 papers, which we rely on as well. But rather, I'd just  
22 summarize and highlight a very few key points.

23 And most critically and fundamentally, Your Honor,  
24 Jones Day -- Jones Day's representations now are -- it's a  
25 little bit of what Mr. Pfister said in a slightly different



1 way. They are continuations of the pre-petition work for  
2 Johnson & Johnson and Old JJCI.

3 Jones Day spent months and earned millions of dollars  
4 working for J&J and Old JJCI on the strategy and the structure  
5 of this debtor and its bankruptcy case. As demonstrated and I  
6 think proven at the motion to dismiss trial, Jones Day was on  
7 all sides of everything. They developed and implemented this  
8 bankruptcy strategy for Johnson & Johnson. And again, I don't  
9 think there's any question about that. There was no  
10 negotiation of anything, most notably the funding agreement,  
11 and the bankruptcy's sole purpose is to address J&J and what  
12 was Old JJCI's talc liability.

13 So it is really dancing on the head of a pin to say  
14 that on October 12th, again, echoing Mr. Pfister's argument,  
15 but to say that on October 12th, when the debtor was born,  
16 Jones Day stopped working for Johnson & Johnson. It's simply  
17 not believable to expect that on October 12th and since then  
18 Jones Day could set aside its allegiance to J&J and take on the  
19 debtor's duties to talc claimants who are directly adverse to  
20 J&J.

21 More concretely, it's neither reasonable nor fair to  
22 expect that Jones Day could or would challenge, never mind  
23 prosecute an action if necessary, the Texas Two Step as a  
24 fraudulent transfer or otherwise, or the funding agreement,  
25 including to bring claims in connection with the funding



1 agreement, if necessary.

2 And remember, Jones Day continues to work directly  
3 for J&J on other matters. As Judge Friendly in the Matter of  
4 Ira Haupt case, Second Circuit case from 1966, said, quote, The  
5 conduct of bankruptcy proceedings not only should be right, but  
6 must seem right, close quote.

7 These retentions are neither right, nor seem right.  
8 The motion to dismiss trial testimony, including that of Mr.  
9 Wuesthoff, showed the debtor's lack of independence from  
10 Johnson & Johnson. And I appreciate again the Court's ruling,  
11 and it is what it is, but I would repeat the fact that, in  
12 effect, the debtor is not independent from J&J. And the Court  
13 and the world at large, watching the trial, witnessed J&J's  
14 in-house litigation lawyer, Mr. Haas, sit in the well of the  
15 courtroom and direct Jones Day and the debtor's personnel in  
16 carrying out the motion to dismiss trial.

17 They are neither officers of the debtor, all of whom  
18 are secunded from Johnson & Johnson, or lawyers who are truly  
19 independent of Johnson & Johnson. The Jones Day time records  
20 we've seen to date indicate constant interaction with Mr.  
21 Haas and other J&J lawyers, including regarding critical  
22 strategic issues.

23 The Court has determined this debtor's bankruptcy was  
24 not filed in bad faith and should remain in bankruptcy. The  
25 least that creditors, in this case talc claimants, should be



1 afforded is to be able to rely on the debtor and its  
2 professionals meeting their duties to creditors so they -- so  
3 that they can at best get a fair shake. We think that's  
4 impossible here.

5 As set forth in our papers, the foregoing facts  
6 support denial of Jones Day's retention under 327(a), based on  
7 both there being an adverse interest and Jones Day not being a  
8 disinterested person. And we believe that the record  
9 demonstrates both actual and potential conflicts, requiring  
10 that Jones Day's retention be denied.

11 Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Jonas.

13 Mr. Sponder.

14 MR. SPONDER: Is it morning or afternoon? Good  
15 morning, Your Honor.

16 THE COURT: It's still morning.

17 MR. SPONDER: Good morning. Jeff Sponder from the  
18 Office of the United States Trustee.

19 Your Honor, the United States Trustee objects to the  
20 retention of Jones Day because Jones Day's employment by the  
21 debtor is a blatant and indisputable conflict of interest that  
22 should disqualify it from service under even the most lenient  
23 readings of the Bankruptcy Code and the ethical canons.

24 And to be clear, Your Honor, we're not talking here  
25 about a mere appearance of conflict, a speculative future



1 conflict, or the possibility of a conflict. The conflict here  
2 is actual, present, and palpable.

3 As the Court is well aware, the divisive merger, also  
4 referred to as the Texas Two Step, that led to the creation of  
5 the debtor, is a central issue in this case. Even though the  
6 Court denied the motion to dismiss, the transactions by which  
7 the debtor came into existence and the events leading up to the  
8 October 4th -- October 14th, 2021, bankruptcy filing will  
9 continue to loom large in this case.

10 Jones Day's prominent role in these events is the  
11 reason why it should not be approved as counsel for the debtor.  
12 Jones Day's pre-petition work for non-debtors J&J and JJCI that  
13 led to the debtor's creation will continue to be under a  
14 microscope in this case.

15 As the Court noted in your -- in the opinion on the  
16 motions to dismiss, and I quote, Remedial creditor actions  
17 addressing the pre-petition divisive merger and restructuring  
18 remain available for creditors to pursue if necessary. And  
19 that's at page 32 of 56 of the opinion.

20 Your Honor, I'll first set the stage for the Court by  
21 summarizing the evidence on Jones Day's involvement in the  
22 divisive merger and its prior and continuing role on behalf of  
23 J&J, JJCI, Old JJCI, and New JJCI. I will then present how,  
24 based on these details, Jones Day clearly does not meet 327(a)  
25 standards as it represents an interest adverse to the estate



1 and is not disinterested.

2 Further, Your Honor, Jones Day's retention violates  
3 applicable rules of professional responsibility, in particular  
4 as counsel from that firm will certainly be key witnesses in  
5 the inevitable fraudulent transfer litigation that is to come.

6 Jones Day admits it worked closely with J&J officers  
7 to structure and implement the divisive merger. And that's at  
8 Docket 1190-1, Your Honor, at paragraph 6. In paragraph 10 of  
9 its reply, which was filed on January 18th, 2022, Jones Day  
10 touts its prior representations of J&J and the now non-existent  
11 Old JJCI in the restructuring and announces that the work it  
12 performed for these other clients, and I quote, facilitated  
13 Jones Day's knowledge of the assets and liabilities allocated  
14 to the debtor and contributed to Jones Day's experience in this  
15 complex area. That's also at 1190, Your Honor.

16 Jones Day even cites its work assisting J&J and JJCI  
17 to deposit their liabilities into the debtor as a basis for why  
18 the Court should approve its retention. Jones Day readily  
19 admits that during the eight months immediately preceding the  
20 bankruptcy filing, Jones Day represented J&J and JJCI in  
21 formulating, structuring, documenting, and implementing this  
22 bankruptcy case and the 2021 divisive merger that created the  
23 debtor.

24 All but one of the directors and officers of the  
25 debtor are long-standing J&J employees. And that's from the



1 February 14th, 2022, hearing transcript at page 97, lines 7  
2 through 10, and who have been secunded to the debtor. The one  
3 director that has not been secunded is Mr. Deyo, who is a  
4 purported independent director and also a former J&J employee.

5 In its reply, filed before the motion to dismiss  
6 trial, Jones Day stated that its professionals work closely  
7 with individuals who now serve in the debtor's management, as  
8 well as other professionals who had been advising J&J and Old  
9 JJCI. That as well is paragraph 6 in Docket Entry 1190-1.

10 Your Honor, the trial testimony, however, painted a  
11 different picture. Robert Wuesthoff, the debtor's president  
12 and one of its three board members, was not approached about  
13 becoming the debtor's president until a mere two weeks before  
14 the debtor's formation, despite having no professional or other  
15 experience with bankruptcy, talc litigation, litigation of any  
16 kind, or the concept of fiduciary duties.

17 While Jones Day was working for eight months, Mr.  
18 Wuesthoff wasn't offered the job until late September or early  
19 October, and he didn't accept it until October 8th, 2021.

20 Clearly, Your Honor, he was not a member of debtor's  
21 management with whom Jones Day worked closely. In fact, at  
22 trial, Mr. Wuesthoff did not know who Mr. Gordon was, and  
23 Committee counsel had to explain he was lead attorney for the  
24 debtor's bankruptcy case.

25 Important transactional documents, such as the



1 funding agreement, were not negotiated by the debtor or even  
2 Old JJCI officers, including Wuesthoff and Goodridge. Indeed,  
3 the debtor's participation would have been impossible as it did  
4 not exist at the time the agreements were finalized.

5 Jones Day argues in its reply that it is debtor's  
6 chosen counsel and debtor's choice should be given great  
7 deference. And that's also at 1190. However, Your Honor, the  
8 debtor never chose Jones Day. In his initial certification,  
9 Mr. Gordon states the debtor was assigned the Jones Day  
10 engagement with Old JJCI. Clearly Jones Day was J&J's choice  
11 of counsel for the debtor. It was not a choice made by the  
12 debtor. And as with the rest of the transaction, Jones Day is  
13 in place to benefit J&J.

14 Even the debtor's officers know LTL was created to  
15 benefit J&J. As testified to by the debtor's president, the  
16 divisive merger was done to assume the J&J conglomerates talc  
17 liabilities. And that's the February 14, '22 hearing  
18 transcript at pages 134, line 25, to page 135, line -- through  
19 line 13.

20 Similarly, Your Honor, John Kim, the debtor's chief  
21 legal officer, testified that the purpose of the debtor was to  
22 assume all the talc liability of the J&J conglomerate, file for  
23 bankruptcy, and use the debtor's filing to stay all talc-  
24 related litigation against J&J. And that's the -- from the  
25 February 15, '22 hearing transcript at pages 194, lines 6



1 through 9, 196, lines 1 through 16, and 199, lines 15 through  
2 23.

3 As I'm sure Your Honor knows, the requirements of  
4 Section 327 cannot be taken lightly for, and I quote, they  
5 serve the important policy of ensuring that all professionals  
6 appointed pursuant to Section 327(a) tender undivided loyalty  
7 and provide untainted advice and assistance in furtherance of  
8 their fiduciary responsibilities.

9 And that quote comes from Rome v. Braunstein, 19 F.3d  
10 54. That's the First Circuit, 1994.

11 Here, Your Honor, Jones Day has a disqualifying  
12 conflict. It is not disinterested. Pre-petition Jones Day  
13 engineered and guided J&J and Old JJCI through the divisive  
14 merger to limit exposure to present and future claimants.

15 As the Court noted in its opinion on the motions to  
16 dismiss, and I quote, It is unsurprising that J&J and Old JJCI  
17 management would seek to limit exposure to present and future  
18 claims. Their fiduciary obligations and corporate  
19 responsibilities demands such actions. And that's at page 31  
20 of 56.

21 To protect the interest of J&J and Old JJCI, Jones  
22 Day literally placed billions of dollars of talc liabilities  
23 into the debtor to create an entity whose only significant  
24 asset is the right to assert payment under a funding agreement  
25 from Jones Day's former clients, J&J and JJCI, the same clients



1 that now have a fiduciary obligation to their shareholders to  
2 pay as little as possible for a release.

3 Now Jones Day's fiduciary duty is owed to the  
4 debtor's estate, the talc claimants, and its mandate is to  
5 maximize their recovery. Maximization, though, necessitates  
6 aggressive action to obtain the maximum amount possible through  
7 implementation of the very documents Jones Day drafted to  
8 minimize J&J and JJCI's liability.

9 In the recent decision on the motions to dismiss,  
10 Your Honor made some observations about the likely path forward  
11 in these cases. And Your Honor identified two specific matters  
12 that are going to basically determine the outcome of this case.  
13 These matters are first the question of what J&J's obligations  
14 to the debtor are under the funding agreement and secondly,  
15 what are the potential legal claims the debtor has against J&J  
16 due to the divisional merger, whether under a theory of  
17 fraudulent transfer or otherwise.

18 Now, Your Honor, it is significant that these are  
19 both matters on which the debtor and J&J are absolutely adverse  
20 to one another and on which Jones Day itself seems to be on  
21 both sides at once.

22 Let's start with the funding agreement, which, as  
23 many testified, is the most valuable asset owned by the debtor.  
24 The funding agreement is the creation of Jones Day. It was  
25 paid for -- it was paid for this work by J&J. The value of the



1 funding agreement asset is unknown as it was not quantified at  
2 the time it was created. This is certainly an area of dispute  
3 and an issue for which Jones Day is -- Jones Day will be called  
4 upon to provide testimony.

5           It's important to note that once the debtor filed for  
6 bankruptcy, the backstop obligations of the funding agreement  
7 went away and were replaced with a promise by J&J to fund the  
8 debtor's bankruptcy trust.

9           Your Honor, how much does J&J need to pay and what  
10 are they supposed to get in return? The funding agreement  
11 doesn't say. And as the debtor has admitted, these are numbers  
12 that are going to have to be decided through negotiation. And  
13 the debtor, as well as Jones Day as its counsel, will have a  
14 fiduciary obligation to maximize the amount of funding the  
15 debtor gets out of J&J at these negotiations.

16           The problem for Jones Day is that it would be  
17 negotiating over a transaction that it designed when it was  
18 working for J&J on the other side of the table. Is Jones Day  
19 really going to sit down and tell J&J that it needs to pay more  
20 than it thought it was going to have to pay, regardless of what  
21 its old lawyer assured? Jones Day can't, Your Honor, and  
22 won't, because Jones Day is that previous lawyer.

23           This conflict becomes even more egregious when we  
24 look at some of the potential claims of the debtor against J&J  
25 outside of the funding agreement. As we pointed out, as the



1 Committee has pointed out, as just about every commentator who  
2 has been following this case has pointed out, and as Your Honor  
3 yourself mentioned in your dismissal opinion, the divisional  
4 merger and the possibility of avoidance actions arising from  
5 that merger are issues that are going to need to be very  
6 closely looked at.

7           And these are not trivial issues. If the divisional  
8 merger was a fraudulent transfer, which is the position that  
9 the Committee has taken, then the estate may have as much as a  
10 60 billion -- and that's billion with a "B" -- judgment against  
11 J&J. And it's the debtor's fiduciary duty and Jones Day's duty  
12 as the debtor's proposed counsel to investigate those claims  
13 and to recover whatever it can for the benefit of creditors.

14           But that's not what the debtor and Jones Day have  
15 done, Your Honor. Instead, from day one of this case, they  
16 have loudly taken the position that these claims are worthless,  
17 that they don't exist, that they have no intention of  
18 litigating or even looking very closely at them.

19           In fact, the debtor sets forth that, and I quote, it  
20 clearly would never investigate the restructuring as a possible  
21 fraudulent transfer, let alone ask Jones Day to do so. And  
22 that's docket 1190-1 at paragraph 43.

23           As such, Your Honor, Jones Day can neither  
24 investigate the divisive merger, which it orchestrated, nor can  
25 Jones Day fulfill its fiduciary obligations to the estate



1 without the ability to investigate fraudulent transfers,  
2 including the divisive merger.

3           And it is frankly shocking and incredible that a  
4 lawyer for a debtor-in-possession would simply walk away from a  
5 potential multi-billion dollar asset like this. Shocking, Your  
6 Honor, but understandable, because the reality of the situation  
7 is that Jones Day is not an impaired observer in this dispute.  
8 Jones Day was the architect of the alleged fraudulent transfer,  
9 and that makes Jones Day an obvious investigation target and  
10 potential defendant.

11           If the transfer is invalidated, Jones Day may have  
12 issues with J&J. In any case, Your Honor, there is no question  
13 that Jones Day's personal interests are so tied up with the  
14 outcome of any fraudulent transfer action that they cannot be  
15 expected to act as a fiduciary on behalf of the debtor.

16           Additionally, as a result of its integral involvement  
17 with the divisive merger, Jones Day will most assuredly be a  
18 primary fact witness, which will call into question such  
19 ethical rules that prohibit attorneys from serving as counsel  
20 in the case where they are likely to appear as a fact witness  
21 on a significant issue.

22           Not only will Jones Day be a witness in such a case,  
23 it may also be a defendant in the litigation. Jones Day may  
24 bear equal liability to the estate and its creditors.

25           Again, Your Honor, through its retention application,



1 Jones Day seeks to continue representing the debtor and  
2 pursuing J&J, JJCI strategy that Jones Day developed and  
3 orchestrated for the benefit of J&J and JJCI.

4 Although there is no doubt of Jones Day's capability,  
5 as has been seen throughout this case, the Court and interested  
6 parties are now being asked to believe that Jones Day is  
7 beholden only to the debtor and not J&J and JJCI. How can this  
8 be?

9 As the strategy implemented by Jones Day on behalf of  
10 J&J and JJCI commenced pre-petition and continues through this  
11 bankruptcy, how can Jones Day not be beholden to J&J and JJCI?  
12 Advice that Jones Day -- I'm sorry, Your Honor. Advice that  
13 Jones Day purportedly delivers to the debtors is actually  
14 delivered to J&J, JJCI through secured employees.

15 In fact, the monthly fee statements filed by Jones  
16 Day provides that there was direct reporting to J&J from Jones  
17 Day. The monthly fee statements filed by certain other debtor  
18 professionals also reveal multiple weekly calls with senior J&J  
19 executives.

20 Your Honor, we would also like to respond to the  
21 debtor's suggestion that if the Court finds that Jones Day is  
22 conflicted on matters relating to the funding agreement and the  
23 merger, it could cure that conflict by requiring the  
24 appointment of conflicts counsel.

25 While that approach might have some merit in a case



1 where the conflict involved a minor or peripheral matter, it is  
2 not an adequate solution in a case like this, where the  
3 conflicts involve the largest contested matters in the case and  
4 basically permeate the entire plan process.

5 And on this point, Your Honor, we would refer you to  
6 the Bankruptcy Court for the Southern District of New York,  
7 it's analysis in the In re Project Orange Associates, LLC, at  
8 431 Bankruptcy Reporter 363, which found that conflicts counsel  
9 is not a cure for disqualifying conflict where the conflict  
10 involves a matter that is central to the case.

11 And that same analysis applies here, Your Honor, and  
12 the results should be no different if the Court chooses to  
13 grant the Committee derivative standing on some of these  
14 matters, although we note that no such motion for standing has  
15 been filed yet, and it's not clear if the debtor would even  
16 support or resist that motion.

17 The U.S. Trustee understands the potential prejudice  
18 to the debtor should its chosen counsel be denied and that case  
19 law suggests that debtor should be allowed to choose their  
20 specific counsel. However, Your Honor, the Court should not be  
21 persuaded by any prejudice the debtor may allege if Jones Day  
22 is disqualified. Even as recently as the trial and the motions  
23 to dismiss, and as I've said before, the debtor's president  
24 didn't even know who Mr. Gordon was.

25 Further, the U.S. Trustee was clear, Your Honor, from



1 the first hearing in his position that the retention issue  
2 should have been decided at that time. As set forth in the  
3 interim retention orders entered in this case, Jones Day was  
4 well aware of the retention issues and despite their existence  
5 agreed to continue to represent the debtor voluntarily and  
6 knowingly and assume the risk of the Court denying its  
7 retention.

8 Jones Day's pursuit of its strategy developed in  
9 representing J&J and JJCI pre-petition and its continuation of  
10 such strategy post-petition renders Jones Day not disinterested  
11 and adverse to the estate.

12 Litigation over what J&J's obligations to the debtor  
13 are under the funding agreement and litigation of potential  
14 claims by the debtor against J&J due to the divisional merger  
15 place J&J and the debtor adverse to one another and on which  
16 Jones Day itself seems to be on both sides.

17 Jones Day will also certainly be a fact witness in  
18 any litigation, including fraudulent transfer litigation  
19 arising from that divisional merger.

20 Your Honor, for the reasons set forth on the record  
21 today, as well as the reasons set forth in the United States  
22 Trustee's objection, as well as the other objections, the  
23 United States Trustee respectfully requests that the Court  
24 sustain its objection and enter an order denying the debtor's  
25 retention of Jones Day.



1 I thank you, Your Honor.

2 THE COURT: Thank you, Mr. Sponder.

3 Mr. Sponder, did the U.S. Trustee file any written  
4 supplemental objection?

5 MR. SPONDER: There was no supplemental objection  
6 filed, Your Honor, just the regular objection.

7 THE COURT: Back in November?

8 MR. SPONDER: I don't know exactly when it was filed.

9 THE COURT: Okay. I raise the point only because you  
10 obviously read through quite a bit of argument that included  
11 citations, elements of the transcripts, and yet without having  
12 a written in advance -- a written product, it kind of deprives  
13 the Court of the ability to truly comprehend the meaning of the  
14 citations or look at the precedent that has been cited. It  
15 somewhat handcuffs the Court, just for the future.

16 MR. SPONDER: My apologies for that, Your Honor. And  
17 I try not to file too many things when there's no -- when --  
18 when there's nothing that says you can file, can't file. I did  
19 see those that were filed.

20 THE COURT: Clearly, nobody has been inhibited in  
21 this case.

22 (Laughter)

23 MR. SPONDER: That's my point, Your Honor. But, you  
24 know, I typically stick to that point.

25 THE COURT: And I appreciate the workload. It's just



1 a matter of being able to absorb from -- from the oral argument  
2 is somewhat difficult.

3 MR. SPONDER: Understood, Your Honor.

4 THE COURT: Thank you.

5 Anyone else as an objecting party? I see no one on  
6 Court Solutions.

7 Mr. Gordon, any reply?

8 MR. GORDON: Just a few things, Your Honor, and I'll  
9 work -- I'll work backwards here.

10 I think with respect to the United States Trustee,  
11 largely the arguments devolve into a strong belief apparently  
12 by the U.S. Trustee that the divisional merger harmed  
13 Plaintiffs, that it effectuated a fraudulent transfer, and that  
14 disqualification is obvious based on that.

15 And I would say there's nothing really in the record  
16 that supports that. Those are just arguments to me with --  
17 with no substance.

18 The one thing I did want to react to though was this  
19 idea that because we did work for J&J, there should be  
20 skepticism about whether we would maximize assets. And to me,  
21 that's looking at this case the wrong way.

22 In light of the funding agreement, I would say that  
23 there's no -- there should be no real concern that assets are  
24 there and available. And there's no reason to question that  
25 Jones Day would do anything other than maximize assets.



1           The issue in the case isn't that. The issue is what  
2 is the extent of the liability? And that's what we're going to  
3 be mediating about. That's what we would ultimately  
4 potentially be estimating in the absence of a mediation. And I  
5 would submit that the interests of LTL, J&J, New JJCI are  
6 completely in alignment on that. And that's where the parties  
7 have to ultimately reach a meeting of the minds.

8           So when Mr. Jonas suggests and the U.S. Trustee  
9 suggests that we're in a position where we can't properly  
10 observe our fiduciary duties or respect our duties to  
11 claimants, I mean, what are we talking about? I mean, is there  
12 seriously a concern that Jones Day won't maximize or preserve  
13 assets?

14           As I tried to say earlier, and I think Your Honor got  
15 it right, there's no reason to expect there's going to be an  
16 issue, but that's not really what the question is. It's almost  
17 like the arguments that are being made are you need to have  
18 someone in place who will agree to a high number, and that  
19 wouldn't be appropriate, obviously.

20           The issue in this case is what is the extent of the  
21 liability? And again, I think there's no conflict with respect  
22 to that. The interests are all aligned.

23           Obviously, Mr. Sponder said a number of times as well  
24 it's obvious that Jones Day would have to be a witness in this  
25 inevitable fraudulent transfer proceeding or attack on a



1 divisional merger. And for the reasons I argued earlier, I  
2 would submit that that's -- that should not be the case.

3 The other thing I want to -- just wanted to remind  
4 everyone of is this argument that this Texas Two Step, this is  
5 all a new strategy, it's never been done before, it's a reason  
6 why Jones Day shouldn't be allowed to be counsel, but of  
7 course, we're forgetting again the Owens-Illinois case, the  
8 Paddock Enterprises that I talked to Your Honor about before.

9 That's not a Jones Day case, by the way. Mr. Pfister  
10 said we've handled each of these cases. That was a case filed  
11 by Latham. A very similar approach. They called it something  
12 different. They didn't use the Texas divisional merger  
13 strategy, but the transaction was effectively the same.

14 Garlock, same thing. Another law firm there. And,  
15 of course, there was no disqualification of counsel in either  
16 case, no determination that counsel was conflicted, actually  
17 conflicted where it couldn't be involved.

18 And I wonder how far these arguments go, if counsel  
19 was involved in some kind of restructuring prior to the  
20 bankruptcy, whether on the eve of the bankruptcy or several  
21 months before, is that disqualifying in every case? That's  
22 kind of what I'm hearing from the U.S. Trustee and potentially  
23 Mr. Pfister, that because you're involved, that somehow there's  
24 a taint that goes with that, and it's not appropriate for the  
25 firm to also serve as counsel.



1           Mr. Pfister also said a number of times that all of  
2 this was a charade, it lacked credibility. I think Mr. Jonas  
3 has said the same thing. I think what -- what the Committees  
4 and the parties have lost sight of is the fact that we were  
5 asked to represent the debtor.

6           And all the -- the facts that we provided with  
7 respect to the successive representations just to me show how a  
8 firm properly positions itself to be able to do the work, you  
9 know, again, with the authorization and permission of all the  
10 relevant parties that you have to terminate one representation  
11 to take on the next. That's -- that's not a charade. I mean,  
12 that's -- that's just the result of the fact that the decision  
13 was made that the firm should represent LTL in connection with  
14 the bankruptcy. That was the choice that was made.

15           And then ultimately, I guess the last thing I would  
16 say, with respect to Mr. Pfister, he made a number of sort of  
17 general arguments about the significance of the merger and the  
18 significance of this approach and how important this is to  
19 Jones Day. But I would say they didn't tie any of that back to  
20 the actual standards under Section 327.

21           And all of that, even if it were true, to me did not  
22 establish a basis to suggest either an actual conflict or a  
23 potential conflict for all the reasons that I argued initially.

24           So again, Your Honor, I would ask that Your Honor  
25 approve the retention application.



1 THE COURT: All right. Thank you, Mr. Gordon. Well  
2 argued on all sides.

3 The matter comes before the Court upon the  
4 application for retention by the Jones Day law firm. This  
5 court has jurisdiction under 28 U.S.C. 1334. This is a core  
6 matter under 28 U.S.C. 157(b).

7 Let me first -- allow me first to just review some of  
8 the basic applicable law from within our circuit. The Third  
9 Circuit has made clear that disqualification of a law firm is  
10 an extreme remedy. And under the Third Circuit's precedent,  
11 disqualification depends on a review of the facts of the case,  
12 and is not automatic by any means.

13 The courts within our circuit have been mindful of a  
14 litigant and a debtor, in this case, right to counsel of its  
15 choice, and have thus created a burden which is exceptionally  
16 high, as motions to disqualify are viewed with significant  
17 disfavor within the Third Circuit as a potential abuse of  
18 litigation technique.

19 I'm not suggesting that that's the case here. There  
20 are obvious questions that have been raised and I believe  
21 addressed.

22 As the -- as the Third Circuit has noted repeatedly,  
23 my starting point for professional retention under Section  
24 327(a) is, for the most part, a two-part test. To be retained  
25 as counsel, the applicant must not hold or represent an



1 interest adverse to the estate and must be a disinterested  
2 person. And a disinterested person is defined in relevant part  
3 as someone without an interest that is materially adverse to  
4 the interest of the estate.

5 Now, the purpose behind these requirements is to  
6 ensure effective representation of the bankruptcy estate, not  
7 any individual creditors, not any individual party. But in  
8 other words, they're designed to ensure that the professional  
9 is able to act in the best interest of the estate and can  
10 competently and vigorously represent the bankruptcy estate,  
11 including the debtor-in-possession.

12 The Third Circuit advises or instructs that a  
13 professional will be deemed to hold a prohibited adverse  
14 interest where such professional holds or represents interests  
15 that are in competition with the debtor and that would  
16 actually, not speculatively, impair the service and its  
17 obligations as an estate fiduciary.

18 The perspective is to be gleaned from the -- from  
19 that of the estate, and counsel is disqualified under 327(a)  
20 only if it presently holds an interest or represents an  
21 interest. And the -- its prior representation is not  
22 necessarily disqualifying.

23 Turning to this case, the Court, of course, builds on  
24 its findings of fact and conclusions of law in the opinions  
25 resolving the motions to dismiss as well as the pending



1 adversary proceeding at the time seeking a preliminary  
2 injunction.

3           The Court finds that Jones Day does not hold or  
4 represent an interest that is directly adverse to another  
5 client or to another party in this case, obviously apart from  
6 the creditors themselves, and that the interests of the debtor  
7 are fully aligned at this juncture with Johnson & Johnson and  
8 New JJCI.

9           And those that -- that finding is important because  
10 the alignment of the interests serve to ensure that Jones Day  
11 is not going to be in competition or that its client, rather,  
12 is not going to be in competition with what's in the interest  
13 of these estate.

14           What are these aligned interests? These are an  
15 interest in reaching a global settlement of the talc  
16 liabilities through a Chapter 11 process.

17           The Court does not find that the debtor is in  
18 competition with Johnson & Johnson at this juncture or New JJCI  
19 and that the prior representation of Johnson & Johnson which  
20 ceased prior to the filing does not serve to disqualify Jones  
21 Day at this juncture.

22           The Court does not find that Jones Day pre-petition  
23 representation of J&J or Old J&J creates a situation where it  
24 will favor the interest of those entities or New JJCI over that  
25 of the debtor.



1           The Court's findings with respect to the motion to  
2 dismiss do not support a determination that there is an actual  
3 disqualifying conflict. Again, I would point out at this  
4 juncture, at best or at worst, depending upon your perspective,  
5 there is a potential conflict which this Court does believe can  
6 be addressed through the retention of conflict counsel. But at  
7 this point in time, the Court has no record upon which it can  
8 make a finding that there is a facially plausible claim against  
9 the debtor or by the debtor or by the bankruptcy estate against  
10 Johnson & Johnson.

11           It is clear that Jones Day will not be involved if  
12 there is such a dispute that arises with respect to the funding  
13 agreement or with respect to any potential claims that arise  
14 out of the 2021 corporate restructuring. It is undisputed, at  
15 least in the Court's eyes, that the 2021 corporate  
16 restructuring was an integrated transaction. That's been  
17 established.

18           But there has to be more than simply that  
19 restructuring to disqualify Jones Day from representing the  
20 debtor and only the debtor in this bankruptcy estate. The  
21 Court does not accept that Jones Day's representation  
22 contravenes any of the applicable RPCs that have been cited:  
23 1.7, 1.8, 1.9, or 3.7.

24           With respect to the lawyer as a witness, indeed, that  
25 RPC only applies for situations at trial. It was intended to



1 ensure that juries would not be confused by a lawyer's advocacy  
2 versus factual testimony. And it doesn't disqualify an entire  
3 firm. But the reality, and the Court accepts the reality that  
4 it's unlikely that Jones Day will be testifying given the vast  
5 majority of its information would fall under work product/  
6 attorney-client privileges. We already visited some of those  
7 issues as part of the discovery with respect to the motions to  
8 dismiss.

9           The Court certainly envisions or believes it would be  
10 proper to include a reservation of rights for the parties,  
11 should there be -- should the facts warrant taking issue with  
12 their continued representation.

13           Going back to the conflicts issue, the Court is  
14 comforted by the significant body of case law that allows the  
15 retention of conflict counsel to address disputes that arise.  
16 The Court differs with the U.S. Trustee, respectfully, as to  
17 what is central in this case.

18           The Court does not believe the 2021 corporate  
19 restructuring is central to this bankruptcy. It was a vehicle  
20 which enabled the bankruptcy. It may give rise to claims that  
21 are potential at this juncture. But what is central to this  
22 bankruptcy is resolving claims, claims of injured parties and  
23 funding those claims. That does not involve the corporate  
24 restructuring.

25           There is also an overwhelming body of case law which



1 supports a court's ruling to permit retention even where there  
2 is the existence of a disqualifying factor. In other words,  
3 courts have approved retention of law firms notwithstanding  
4 certain conflicts with RPCs when doing so is in the best  
5 interest of the bankruptcy estate.

6 Courts have looked to the time and money of getting  
7 involved in getting new counsel up to speed, the delays that  
8 would be reflected in replacing counsel, the amount of work  
9 involved by counsel to date, the amount of time and effort  
10 necessary to get new counsel up to speed. And, certainly,  
11 there's no question as to the complexity of this case to date.

12 And the Court questions whether replacing the firm of  
13 Jones Day were it so required would truly be in the interest of  
14 the bankruptcy estate. But the Court doesn't need to get there  
15 because it's not finding that there is a disqualifying basis to  
16 preclude retention.

17 For those reasons, the Court overrules the objections  
18 that have been raised and will approve Jones Day's retention  
19 *nunc pro tunc* back to I guess October 14th and will ask counsel  
20 to circulate a proposed form of order because the Court wants  
21 to ensure that there is the proper reservation of rights.  
22 Thank you.

23 Now we have both Weil Gotshal and Skadden.

24 MR. PRIETO: Your Honor, I think it's afternoon now,  
25 so good afternoon. Dan Prieto of Jones Day on behalf of the



1 debtor. Your Honor, I'll start with Weil.

2           With respect to the Weil application, Your Honor, the  
3 debtor is seeking to retain Weil as special counsel pursuant to  
4 327(e) to continue to represent the debtor in the Imerys and  
5 Cyprus cases. And as Your Honor may be aware, Weil has been  
6 representing parties in that case for almost three years now.  
7 So the debtor desires to have the benefit of that extensive  
8 knowledge and experience on a go-forward basis. Weil will not  
9 represent the debtor as general bankruptcy counsel, and its  
10 role will be limited to, you know, the Imerys and Cyprus  
11 matters.

12           Your Honor, there was an objection filed by the  
13 Committee. We have had some meet and confers, maybe not  
14 recently but in the past. And I think based on those meet and  
15 confers, my understanding is the issues are largely if not  
16 entirely resolved.

17           There is one open issue, I believe, that the parties  
18 may need Your Honor's input on and that was raised at the last  
19 hearing. And that relates to a statement made in the  
20 supplemental certification of Ronit Berkovich in support of the  
21 application, and that's Paragraph 16, Your Honor. I'll go  
22 ahead and just read it:

23           "Johnson & Johnson on occasion has sought Weil's  
24 views on issues that are related to the debtor's  
25 Chapter 11 case but are outside of the scope of



1 Weil's retention by the debtor under 327(e) of the  
2 Bankruptcy Code."

3 So my understanding is I think the Committee does  
4 have an issue with that, potentially. I'm not sure from the  
5 debtor perspective what the issue is because from the Debtor's  
6 perspective, the fact that Weil wants to provide its views on  
7 these issues to J&J doesn't really run afoul of the standards  
8 of 327(e).

9 As Your Honor knows, special counsel only must not be  
10 adverse to the debtor with respect to the matters for which  
11 they're being retained. And this advice to J&J has nothing to  
12 do with the Imerys and Cyprus matters be definition. It's  
13 outside the scope of the retention. And, of course, that  
14 advice would not be paid for by the debtor. It would be paid  
15 for by J&J.

16 In addition, Your Honor, I did want to note that  
17 while I don't believe it's required by 327(e), Weil has agreed,  
18 and this is in their certification, that it will not represent  
19 J&J in any matters adverse to the debtor or its estate. So  
20 it's taking it a step further.

21 So the debtor doesn't see an issue with this.  
22 Obviously, if Your Honor has a concern, we're happy to address  
23 it in any order approving Weil's retention. But I wanted just  
24 to address that issue.

25 THE COURT: I assume Weil Gotshal wouldn't be paid by



1 the estate for advice being given to J&J.

2 MR PRIETO: That's correct, Your Honor. That would  
3 be billed only to J&J.

4 THE COURT: All right. Let me hear from objectors.  
5 Thank you.

6 MR. PRIETO: Thank you, Your Honor.

7 MR. JONAS: Your Honor, Jeff Jonas, Brown Rudnick,  
8 for TCC1. It is a very discrete issue, Your Honor, and I think  
9 Mr. Prieto largely got it correct. Our problem is we don't  
10 think it's appropriate for Weil at one time or at the same  
11 breach representing the debtor to also be providing advice  
12 relating to the debtor's bankruptcy to Johnson & Johnson. Just  
13 too close for comfort, Your Honor.

14 Johnson & Johnson has plenty of bankruptcy lawyers,  
15 including White & Case and others. We don't think it was  
16 appropriate for -- to be able to shave it right down the line  
17 and be able to talk about on the one hand they say they won't  
18 provide any advice adverse to the debtor. I don't know what  
19 that means in the context of if they're providing advice to  
20 Johnson & Johnson about this bankruptcy, it very well could be  
21 adverse, Your Honor.

22 So that was our only issue with the retention.

23 THE COURT: I'm going to leave it to counsel to draft  
24 the order. But I believe Johnson & Johnson could clearly look  
25 to White & Case for its advice relative to this bankruptcy.



1 And I don't think it needs to look to the debtor's counsel for  
2 it. So I would agree with that limitation. There are other --  
3 Weil Gotshal's a great firm. There are other firms that they  
4 could provide advice to Johnson & Johnson.

5 MR. PRIETO: Thank you, Your Honor.

6 THE COURT: Thank you.

7 So the Court will approve the retention subject to  
8 that limitation.

9 MR. JONAS: Thank you, Your Honor.

10 THE COURT: And that's going forward.

11 MR. PRIETO: I appreciate it, Your Honor. We'll  
12 prepare that order.

13 THE COURT: I'd like to take a ten-minute break. I  
14 think other people would like to take a ten-minute break. So  
15 we'll come back at a quarter of.

16 MR. PRIETO: Thanks.

17 THE COURT: Thank you.

18 (Recess at 12:35 p.m./Reconvened at 12:51 p.m.)

19 THE COURT: It's good to see people in a better mood.

20 MR. PRIETO: We're almost done, Your Honor.

21 THE COURT: We're getting there. All right, Counsel.

22 MR. PRIETO: Your Honor, for the record, Dan Prieto  
23 of Jones Day on behalf of the debtor. Your Honor, I think the  
24 next item on the agenda, hopefully the last one on the agenda,  
25 is the Skadden application.



1           Your Honor, the debtor is seeking to retain Skadden  
2 as special counsel because of its extensive experience and  
3 knowledge gained as trial counsel and its national discovery  
4 counsel of Old JJCI in the talc-related litigation. Initially,  
5 in these cases, the debtor planned to retain Skadden as  
6 ordinary-course professional to be available to address issues  
7 in the underlying state tort lawsuits in which they were  
8 involved.

9           But it soon became apparent that the debtor required  
10 Skadden's knowledge and expertise in these Chapter 11 cases.  
11 So as a result in I think it was mid-December, the debtor filed  
12 an application seeking to retain Skadden as special counsel.

13           The Talc Committee and the U.S. Trustee each filed  
14 objections to the application. And for the reasons Your Honor  
15 set forth in our reply and in our supplemental reply, the  
16 objections are misplaced and, we submit, should be overruled.  
17 So I'm not going to repeat all the various things in the  
18 pleadings, but I did want to address some of the key objections  
19 that have been raised.

20           So, first, Your Honor, the objectors argue that the  
21 scope of Skadden's retention is too broad. And as Your Honor  
22 is well aware, the standard for a 327(e) retention is that the  
23 debtor is not permitted to employ counsel to assist in the  
24 general administration of the estate. Well, the debtor, Your  
25 Honor, is not seeking to retain Skadden to do that. We just



1 had the Jones Day retention application. That's what Jones Day  
2 is doing administering these cases.

3 As we stated in the application, the debtor is  
4 seeking to retain Skadden for a limited and specific purpose  
5 which is to advise the debtor on issues relating to the defense  
6 of talc-related claims and to assist with discovery matters,  
7 all based on their pre-petition experience.

8 So the objectors argue that the work that Skadden did  
9 on matters in this case go beyond the scope of what we proposed  
10 to retain them for, and what they point to are depositions that  
11 Ms. Brown of Skadden, defendant in this case, as well as  
12 Skadden's role that it played at trial on the motions to  
13 dismiss.

14 And, Your Honor, as we explained in the reply as well  
15 as in the supplemental reply, Skadden did that work precisely  
16 because its experience and familiarity with the factual issues  
17 relating to the talc litigation.

18 As Your Honor witnesses, the Committees repeatedly  
19 raised talc issues in connection with the motions to dismiss  
20 and, in fact, the talc litigation and related issues were major  
21 topics of inquiry both in the depositions, Your Honor, as well  
22 as at trial.

23 And I think more fundamentally, Your Honor, it's  
24 simply not the case that Skadden's, you know, leading the  
25 administration of these cases or even led the defense of the



1 motions to dismiss. You know, Jones Day examined the expert  
2 witnesses and did the opening and closing legal arguments.  
3 What Skadden did was handle the examination of the fact  
4 witnesses and the closing argument with respect to the fact  
5 testimony, which I submit to Your Honor is consistent with  
6 their expertise on talc matters.

7           So, Your Honor, with respect to the scope, the debtor  
8 believes that the services Skadden has provided are appropriate  
9 and do not demonstrate that its administering these Chapter 11  
10 cases.

11           Next, Your Honor, the Committee argues that Skadden's  
12 not even eligible for 327(e) retention here because it did not  
13 represent the debtor prior to the petition date. But, Your  
14 Honor, that just ignores the 2021 corporate restructuring which  
15 as we explained in the pleadings resulted in the allocation of  
16 Skadden's representation of Old JJCI and talc-related  
17 litigation, you know, the debtor. So there's clearly technical  
18 complaints with the statute, Your Honor.

19           And I would also submit that the Committee's position  
20 is contrary to the purpose of the statute which is to permit a  
21 debtor to obtain the benefit of pre-petition counsel's  
22 experience and avoid the inefficiencies of having different  
23 counsel which is exactly what we're trying to accomplish here.

24           And then, finally, on the point, Your Honor, I think  
25 the Committee cites a couple of cases that they allege support



1 the proposition that, you know, there wasn't pre-petition  
2 representation. But I would submit to Your Honor those cases  
3 are all in opposite based on this particular unique facts of  
4 this case. And as we explained in the reply, those cases don't  
5 involve an engagement agreement that was allocated to the  
6 debtor prior to the commencement of the debtor's Chapter 11  
7 case or a situation like we have here where the proposed  
8 counsel served for many years as counsel in the litigation  
9 relating to the very liabilities that have been allocated to  
10 the debtor.

11           Next, Your Honor, the objectors claim that Skadden  
12 has a conflict because it represented both Old JJCI and then  
13 the debtor and J&J in the defense of talc claims. Your Honor,  
14 Skadden does not hold the represented interest adverse to the  
15 debtor or the estate with respect to the matters for which it  
16 is employed, and that's fundamentally, Your Honor, similar to  
17 what Your Honor just found with respect to Jones Day that the  
18 debtor and J&J have an identity of interests with respect to  
19 the defense of talc claims. And that is because they have the  
20 same interest in demonstrating the safety of the talc products  
21 at issue and in virtually every case, as Your Honor heard at  
22 the preliminary injunction hearing, the allegations against J&J  
23 and Old JJCI, now the debtor, are identical.

24           And the Committee does point to the potential for  
25 some kind of indemnity or contribution claim but, Your Honor,



1 with respect to those matters, those are simply outside the  
2 scope of Skadden's proposed retention here. They wouldn't be  
3 handling those matters.

4 And then, finally, with respect to the last prong of  
5 the 327(e) approval, you have the best interests of the  
6 debtor's estate. I don't think the objectors are really  
7 questioning, as far as I've read their objections, whether this  
8 is in the best interest of the estate. I think that's a fairly  
9 easy standard to satisfy, particularly where you have special  
10 counsel with the extent of the experience on important issues  
11 in the case that Skadden has.

12 And I would also underscore that, you know, Skadden's  
13 expertise with respect to the discovery issues has been pretty  
14 invaluable to the debtor's ability to respond efficiently and  
15 timely to the various discovery requests that we've received in  
16 the case. So, Your Honor, I would submit there's no doubt that  
17 retaining Skadden would be in the best interest of the debtor's  
18 estate.

19 And, Your Honor, the final issue I wanted to address  
20 that was raised by the objectors, I think this one was only  
21 raised by the U.S. Trustee, is *nunc pro tunc* retention. You  
22 know, admittedly here, the application was filed a couple of  
23 months into the case. But, Your Honor, I would submit that  
24 there's a reasonable basis for that relatively short delay in  
25 filing the application.



1           You know, as I mentioned earlier, the debtor  
2 originally contemplated having Skadden act as ordinary-course  
3 professional in the case. And, you know, then it became  
4 apparent early on in the case that we would need them to play a  
5 larger role. And I think, in fact, there was a request by the  
6 Committee to take them off the ordinary-course professional  
7 list and actually, you know, file an application. But that was  
8 right around the time the case was transferred, and there was  
9 some disruption there and some delay in sort of putting  
10 together an application and filing it which we did ultimately  
11 in mid-December, December 15th.

12           And I would say in terms of the prejudice, I don't  
13 think there is any here. From October 14th, the petition date,  
14 through November 14th, Skadden incurred about \$30,000 in fees.  
15 And then in the next 30 days following that before the  
16 application was filed on December 15th, Skadden incurred a  
17 little over 300,000 in fees. So I think in the context of this  
18 case, that's pretty modest amounts.

19           And I would note that, you know, the claimants and  
20 the Committees aren't objecting to *nunc pro tunc* retention. So  
21 the parties in interest aren't opposing that. So for all those  
22 reasons, Your Honor, I would request that Your Honor approve  
23 the retention of Skadden and special counsel and overrule the  
24 objections.

25           THE COURT: All right. Thank you, Counsel.



1 Mr. Jonas?

2 MR. JONAS: Your Honor, Jeff Jonas, Brown Rudnick,  
3 for TCC1. I'll restate my respect in filing this for Ms. Brown  
4 and, of course, respect for Skadden. That's not what this is  
5 about. I think, Your Honor, also rely in our papers. I won't  
6 restate. I'll keep this very, very discrete.

7 Your Honor, the application seeks to retain Skadden  
8 under 327(e) for the following: A, assist the debtor in  
9 connection with any issues of proceedings implicating the  
10 factual and scientific basis supporting the defense of the  
11 underlying talc-related meso and ovarian cancer claims; B,  
12 assist the debtor with discovery relating to meso and ovarian  
13 cancer claims; C, assist the debtor in connection with any  
14 estimation proceeding for the debtor's talc-related claims; D,  
15 assist the debtor in any issues of proceedings related to the  
16 stay or other matters relating to talc-related claims in  
17 non-bankruptcy forums; and E, provide such other specific  
18 services as may be requested from time to time relating to  
19 defense, estimate, resolution of debtor's talc-related claims  
20 in the Chapter 11 case.

21 Your Honor, I won't belabor it. You were here, as I  
22 was, for the trial. And I participated in the lead-up to the  
23 trial and can tell you that Ms. Brown and Skadden, in my  
24 opinion, really ran the trial and they really ran the debtor's  
25 defense to the motion to dismiss. I think that is far beyond



1 the scope of what I just read to you, what is the intended  
2 retention of Skadden under 327(e). And on that basis, I don't  
3 think the retention can be approved.

4 That's really all I have to say, Your Honor. Thank  
5 you.

6 THE COURT: All right. Thank you, Mr. Jonas.  
7 Other counsel?

8 MS. RICHENDERFER: Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 MS. RICHENDERFER: Linda Richenderfer, again, from  
11 the Office of the United States Trustee.

12 I guess I'm going to pick up basically where Mr.  
13 Jonas left off. The United States Trustee objects to this  
14 retention because Skadden, respectfully, does not fall within  
15 the parameters of a Section 327(e) retention. 327(e) is only  
16 for -- is a more lenient standard and only requires that the  
17 professional or the attorneys who are going to be retained are  
18 going to not have an interest adverse to the estate with  
19 respect to the matter on which such attorney is to be employed.

20 In the documents, the debtor says they're being  
21 employed basically to help us with the talc litigation like  
22 they always did previously for JJCI. Your Honor, I attended I  
23 think 90 percent of the depositions, and I was here for the  
24 entire trial. And I will tell Your Honor that they were  
25 defended, the fact witnesses were defended by counsel from



1 Skadden. And the fact witnesses included not only the officers  
2 of LTL but also officers and employees of J&J and JJCI.

3 Ms. Brown represented JJCI's president, Michelle  
4 Goodridge, J&J's Vice-President and Assistant Corporate  
5 Controller Adam Lisman, the head of Worldwide Consumer Health  
6 Thibaut Mongon. And she also represented Ms. Ryan who was  
7 formerly a treasurer of J&J.

8 Most importantly, Your Honor, and I think this is the  
9 part that concerns us the most, it was Ms. Brown during those  
10 depositions who instructed J&J and JJCI's witnesses not to  
11 respond to certain questions on the grounds that it would  
12 disclose attorney-client privileged information. These were  
13 privileges that didn't belong to the debtor. These were  
14 privileges that belonged to J&J and JJCI.

15 We've heard today from Mr. Gordon regarding the fact  
16 that J&J has its own counsel, White & Case, and that is indeed  
17 a fact. And why they weren't the counsel for those witnesses  
18 during the depositions remains unknown. As counsel for  
19 JJ/JJCI, they could have been asserting those privileges. But,  
20 no, it was Ms. Brown who asserted those privileges.

21 Your Honor was here and Your Honor heard the trial.  
22 Your Honor noted in your February 25th opinion that the  
23 labyrinth progression toward the creation of the debtor is  
24 somewhat overwhelming, and that is on Page 5 of Your Honor's  
25 February 25th opinion. I don't think there's anybody in this



1 room that would disagree with that conclusion, Your Honor. But  
2 the hearing on the motion to dismiss was to take us through  
3 that labyrinth. It was to go through that progression. And it  
4 was to focus on the funding agreement.

5 I heard Your Honor previously state that with respect  
6 to Jones Day, you see the interest of J&J, JJCI, and the debtor  
7 being aligned with respect to the liability. But, Your Honor,  
8 we have another issue here which is the funding, and it's the  
9 funding agreement. And Your Honor said also in your opinion on  
10 February 25th at Page 31, frankly, it is unsurprising that J&J  
11 and Old JJCI management would seek to limit exposure to present  
12 and future claims. Their fiduciary obligations and corporate  
13 responsibilities demand such action.

14 And so we have a dichotomy here, Your Honor, where we  
15 have Skadden going beyond the four corners of a 327(e)  
16 retention and representing the debtor in connection with its  
17 case through the work it did with respect to the motion to  
18 dismiss and then we have also Skadden during its 327(a)  
19 activities, Your Honor, representing J&J, JJCI, and the debtor  
20 on fundamental issues such as the funding agreement.

21 And the funding agreement, again, Your Honor,  
22 acknowledged it is management, J&J's management who would want  
23 to limit exposure. And it is the debtor, as the fiduciary for  
24 the claimants, who has the obligation to ensure that the  
25 funding is to the maximum extent in order to reconcile all of



1 the claims that are now facing the debtor.

2 Debtor has stated that they used Skadden at the trial  
3 because of its prior talc-related experience. Your Honor, no  
4 doubt about it, there were questions during the depositions and  
5 questions during the trial about talc liabilities, about the  
6 history of J&J's talc litigation. I think it is in Ms. Brown's  
7 certification that she states that Skadden became counsel for  
8 J&J and JJCI in 2019 on talc litigation. So we don't have --  
9 they didn't have the whole history of representing the debtor,  
10 predecessors, J&J in talc litigation going back to the time of  
11 the beginning. They had been working with J&J for about two  
12 years.

13 But more importantly, Your Honor, the subject matter  
14 went far beyond that in terms of the discovery and in terms of  
15 the testimony presented during the trial. The subjects went  
16 into in great detail the labyrinth process that Your Honor  
17 stated and observed in your opinion on February 25th. Skadden  
18 is one of the few law firms representing the debtor who is  
19 relatively up to date in terms of filing their monthly fee  
20 statements. So we did have the benefit of looking at those,  
21 and they are on the docket at DI-1610, 1611, and 1612.

22 And they are replete with numerous, sometimes daily,  
23 meetings between Ms. Brown, other attorneys from Skadden, Mr.  
24 Haas, and Mr. White, Mr. Haas and Mr. White both being in-house  
25 attorneys for J&J. While White & Case occasionally appears in



1 a description, they're not all the time in the descriptions.

2 And I must say as someone that needs to review fee  
3 statements, I very much appreciated the very detailed nature of  
4 the Skadden fee statement because people were listing everyone  
5 who was on the telephone call, everyone who was at the meeting.  
6 And so if White & Case wasn't listed, one can presume White &  
7 Case wasn't there because if White & Case was on the phone  
8 call, they were listed and they were included. And there were  
9 many such meetings and phone calls that didn't involve anyone  
10 on behalf of the debtor. Occasionally, Mr. Kim was also  
11 listed.

12 I think, though, the striking thing, Your Honor, is  
13 didn't see Skadden going back and reporting to the board of  
14 directors or board of managers of the debtor regarding -- the  
15 depositions or the trial came later in February. We don't have  
16 the advantage of that one yet. But the reports on the  
17 depositions were not going back to the board of directors of  
18 the debtor, were not going back to Mr. Wuesthoff, the  
19 president. They were going back, the reports were being made  
20 to Mr. Haas and Mr. White.

21 So, Your Honor, I think at the end of the day, in  
22 conclusion, we think that the retention under 327(e) is, quite  
23 frankly, a non-starter, that the scope of what Skadden has been  
24 doing has expanded way beyond merely continuing in a  
25 representation as talc counsel and providing advice with



1 respect to talc litigation. It has gone into the 327(a) area.  
2 For that, they would need to file another application. There  
3 is a different standard that needs to be met. And there would  
4 be different information that would need to be included in a  
5 declaration to support that.

6 I would point out, though, to Your Honor, in the  
7 meantime that the role that we saw Skadden play during this  
8 trial far exceeded mere allegiance to the debtor; went into the  
9 area of also representing J&J and JJCI; and, in particular,  
10 Your Honor, I would point out again to the Court the assertion  
11 of a privilege on behalf of non-debtor entities during  
12 depositions of employees and officers of those non-debtor  
13 entities.

14 Thank you, Your Honor.

15 THE COURT: All right. Thank you, Counsel.

16 Anyone else before we go back to debtor's counsel?

17 (No audible response)

18 THE COURT: All right, Counsel.

19 MR. PRIETO: Thank you, Your Honor. Dan Prieto of  
20 Jones Day on behalf of the debtor.

21 Just a couple of things, Your Honor, starting with  
22 the point about the time during which Skadden represented Old  
23 JJCI in talc litigation. I mean 2019 is still a significant  
24 amount of experience, and I don't think anybody's questioning  
25 that Skadden doesn't have the expertise. But just so the



1 record's clear, that was referring to the time when Ms. Brown  
2 joined Skadden from Weil. And in her previous role at Weil, my  
3 understanding is she did represent Old JJCI. So the expertise  
4 and experience goes back further, and that's in part why the  
5 debtor wants to retain them under 327(e) to get the benefit of  
6 that experience.

7           In terms of the criticism about the debtor having  
8 Skadden defend depositions, Your Honor, in my experience, it's  
9 not unusual for debtor's counsel to defend third-party  
10 witnesses both in depositions and at trial if it relates to,  
11 you know, an issue in the bankruptcy case. And that's what we  
12 had Skadden do because I think as people have acknowledged,  
13 there were significant talc-related factual and other issues  
14 raised.

15           And I would submit to Your Honor that it would have  
16 been very inefficient for us to have Skadden address those  
17 witness depositions and testimony at trial but then bifurcate  
18 out the issues and have another lawyer come in and deal with  
19 other questions relating to non-talc issues. So, obviously,  
20 there were some non-talc issues that were brought up with  
21 respect to those witnesses, but we thought it was most  
22 efficient based on what we anticipated would be asked at those  
23 depositions and at trial to have somebody with her expertise be  
24 involved.

25           And the way we bifurcated, as Your Honor saw, was



1 Jones Day took charge of all the legal arguments and the expert  
2 witnesses. And we thought that was an appropriate division of  
3 labor under the circumstances.

4 Let's see, with respect to, you know, some  
5 conferences that were referenced, Your Honor, I haven't had the  
6 benefit of seeing what exact time entries she's referring to.  
7 My understanding from conferring with Mr. Kim is that, you  
8 know, we believe Mr. Kim was actually in all those conferences  
9 or most of them. And, again, it's not surprising, as Mr.  
10 Gordon said in connection with the Jones Day application, that  
11 the parties are talking among, you know, aligned parties in  
12 this case. So I don't think that's of any moment.

13 And then, finally, Your Honor, I just wanted to note  
14 that, you know, this issue about scope, it seems to be the  
15 primary objection still. And, you know, I want to refer Your  
16 Honor to a case that the Committee itself cited in its  
17 objection which is the Woodworkers Warehouse case, 323 B.R.  
18 403, because I think it's helpful here. And that was a  
19 situation where special counsel there was responsible for  
20 handling cash collateral issues, responsible for dealing with  
21 the sale of substantially all the assets of the debtor and,  
22 also, for negotiating and preparing the KERP plan.

23 And you would have thought that with all that sort of  
24 issues central to the case, there would be an issue. But even  
25 under those circumstances, Judge Farnan on appeal ruled that



1 that was still appropriate to retain that counsel under 327(e)  
2 because of the wide range of services left to general  
3 bankruptcy counsel.

4 Well, Your Honor, that's the same thing here. I mean  
5 Jones Day is general bankruptcy counsel. We're handling the  
6 Chapter 11 case. We've brought in Skadden to deal with  
7 specific talc-related issues, and we think that was  
8 appropriate. And, Your Honor, we would ask that you overrule  
9 the objections and approve Skadden's retention.

10 THE COURT: All right. Thank you, Mr. Prieto.

11 Yes?

12 MS. RICHENDERFER: Your Honor, if I may?

13 THE COURT: Yes.

14 MS. RICHENDERFER: I rise -- Linda Richenderfer from  
15 the Office of the United States Trustee. I rise only hopefully  
16 to take one issue off of Your Honor's plate. I forgot to  
17 mention when I was up there that the U.S. Trustee withdraws its  
18 objection to the *nunc pro tunc*, if Your Honor decides that it  
19 is appropriate that they be retained. We withdraw our *nunc pro*  
20 *tunc* objection.

21 THE COURT: Thank you.

22 MS. RICHENDERFER: Thank you, Your Honor.

23 THE COURT: Thank you. I appreciate that.

24 All right. Again, this matter comes before the Court  
25 on the application under 327(e) by the debtor seeking retention



1 of the Skadden Arps firm for a specified special purpose.

2 (Dial tone)

3 THE COURT: That's not good. I didn't touch a thing.

4 Timed out?

5 (Court and Clerk confer briefly)

6 (Pause)

7 THE COURT: All right. Back on? You can hear me,  
8 Bruce?

9 THE CLERK: I can hear you from here. We just want  
10 to make sure that on Court Solutions they can hear you.

11 THE COURT: And can those on Court Solutions hear me,  
12 if anybody would just respond.

13 MS. JONES: Yes, Your Honor. Thank you.

14 THE COURT: Thank you. Usually not hard to get  
15 lawyers to talk.

16 All right. Go back to where we are, this application  
17 to retain Skadden Arps under 327(e) for a specified purpose.  
18 The Court has jurisdiction over this matter under 28 U.S.C.  
19 1334. It is a core matter under 28 U.S.C. Section 157(b).

20 327(e) permits employment of a law firm or an  
21 attorney for a special, a specified special purpose as apart  
22 from conducting the case in general so long as the attorney  
23 does not hold or represent an interest adverse to the debtor or  
24 to the estate with respect for the matter on which he or she is  
25 to be employed.



1           At issue in this application is really whether the  
2 nature of the specified purpose and the scope of the specified  
3 purpose as well as whether or not Skadden is indeed adverse to  
4 the debtor or holds any interest adverse to the debtor or to  
5 the estate.

6           Let's talk about the scope. There is no question  
7 that Skadden was to be retained under a limited retention  
8 arrangement intending to serve as special trial counsel and  
9 discovery counsel to the debtor to advise the debtor on issues  
10 relative to the defense of talc-related claims and their  
11 resolution during the bankruptcy. The intent was to draw on  
12 Skadden's pre-petition history, experience, and conduct, also,  
13 its extensive ECI experience.

14           Did that morph into a more general representation of  
15 the debtor during the course of this bankruptcy? Did it go  
16 beyond that limited purpose? The Court does not find that it  
17 did so.

18           The bulk of the work handled to date by the Skadden  
19 firm has been relative to the pending motions to dismiss and  
20 the preliminary injunction adversary proceeding. And those  
21 issues, those matters involve issues that were relative to the  
22 pending and past talc litigation. And they were clearly  
23 intertwined with the issues involved specifically with the  
24 motion to dismiss.

25           I do not know how you examine or how the Court would



1 be expected to examine the proper bankruptcy purpose of the  
2 underlying filing or the issue as to whether or not the debtor  
3 was in financial distress without examining as well the issues  
4 relative to the pre-petition talc litigation and its history.  
5 By that, I mean an examination of the projections, the  
6 valuations involved with the talc liabilities, the settlements  
7 that had been undertaken, the verdicts and their history, the  
8 indemnity cost, the estimation of the liabilities, the existing  
9 MDL.

10 All of that played a part and was the subject of  
11 extensive testimony and documentary evidence presented to the  
12 Court and all of which has nothing truly to do with the  
13 administration of the case under the Bankruptcy Code. It is  
14 not involved in conducting a Chapter 11 proceeding.

15 But for this Court to examine whether or not LTL had  
16 a proper bankruptcy purpose in filing the bankruptcy or whether  
17 it was clearly under distress at the time of the filing and  
18 recognizing, again, that it was a unified transaction, so to  
19 speak, so that we had to look at the history of Old JJCI and  
20 examine the litigations that were pending, the verdicts that  
21 have been reached, the projections going forward, the  
22 discussions undertaken by the board or the examination  
23 undertaken by the board in filing the Chapter 11 in light of  
24 the pending talc litigation and the estimated liabilities,  
25 involved the very issues that Skadden was retained to assist



1 the debtor in.

2           It is impractical to expect at a deposition for  
3 lawyers to engage in a tag-team effort every time an issue  
4 transcends beyond the specific talc litigation into the other  
5 critical issue that was at play in the motion to dismiss,  
6 meaning the funding agreement and the 2021 corporate  
7 restructuring. Those were critical, too, but they were  
8 separate and apart from the history -- well, they're not  
9 separate and apart, they were all intertwined, but those were  
10 different issues.

11           But to expect Jones Day to interject questions in  
12 that area and Skadden in the other areas during a single  
13 examination of a single witness, whether at trial or in  
14 pretrial discovery is unrealistic. The Court is persuaded that  
15 the debtor and J&J, as I said before, and Old JJCI and New JJCI  
16 all have an identity of interests in defending and addressing  
17 the pending talc litigation claims.

18           Therefore, the Court does not find that the Skadden  
19 firm is current adverse to the debtor in this regard. There is  
20 no question that the Skadden firm's engagement agreement was  
21 allocated to the debtor prior to the filing, so it meets the  
22 explicit terms of the statute under 327(e). I appreciate that  
23 the U.S. Trustee has taken the *nunc pro tunc* issue off the  
24 table.

25           But, again, in light of the interrelation between the



1 talc litigation issues and the history of the talc litigation  
2 and the estimation going forward of the indemnity and expenses  
3 of the talc litigation with the issues that were litigated as  
4 part of the motion to dismiss and the preliminary injunction  
5 hearings, the Court finds that Skadden's representation of the  
6 debtor to date falls well within 327(e) and is proper for  
7 retention.

8           Going forward, I think the Court's going to admonish  
9 the Skadden firm that those issues -- well, subject to the  
10 appeals that are pending in other proceedings that I'm sure to  
11 come down the road, but that the Court will be keeping an eye  
12 on the services that are being rendered by the Skadden firm  
13 versus Jones Day in the ordinary conduct of the case.

14           So the objections to date are overruled. The Court  
15 will enter an order approving the retention. I think that  
16 resolves that issue.

17           Mr. Stolz?

18           MR. STOLZ: Your Honor, just a few housekeeping  
19 matters.

20           THE COURT: Yeah. I was going to address a couple,  
21 but go ahead.

22           MR. STOLZ: Your Honor mentioned a call next week by  
23 phone on the mediation protocol.

24           THE COURT: Right.

25           MR. STOLZ: I'm not sure that Your Honor had



1 indicated a date and a time.

2 THE COURT: Well, the date was going to be March  
3 15th, Tuesday. The time would be 11:30. I also -- well, do  
4 you have anything else on your checklist?

5 MR. STOLZ: I have a couple of other housekeeping  
6 matters. The three firms that are currently representing TCC1  
7 were originally retained on behalf of TCC. And Your Honor  
8 indicated we didn't have to submit new applications. Can we  
9 presume that that will continue until April 12th, that we'll  
10 still keep operating under the original retention that we had  
11 from the TCC original?

12 THE COURT: Yes. To the extent you all want a  
13 comfort order that clarifies it, I'm amenable to that.

14 MR. STOLZ: We're submitting our monthlies and  
15 getting paid. That's all the comfort we really need, Your  
16 Honor.

17 (Laughter)

18 THE COURT: That's all the comfort you need? Okay.

19 MR. STOLZ: The third thing is TCC 1 has not filed  
20 its notice of appeal or its motion for certification yet. We  
21 wanted to see what was happening with the two committees today.  
22 We want to address the interlocutory issue Your Honor raised.  
23 Mr. Weinegrad (phonetic) tried to show me a case on his cell  
24 phone, but my sight is not good enough to read that. But we'll  
25 address that in our motion, and we'll file it by Friday which



1 will bring us within 21 days. And we'd ask just to be allowed  
2 to have that filed by Friday and returnable on the 30th.

3 THE COURT: That's fine. And if it goes beyond and  
4 if it goes to Monday, we'll do it on -- we'll just enter a  
5 short -- an ordering shortening time.

6 THE CLERK: Judge?

7 THE COURT: Yes.

8 THE CLERK: Can you just repeat that for the benefit  
9 of people on Court Solutions and Zoom because they're not  
10 picking up what Mr. Stolz said?

11 THE COURT: Do you want to come up to the mic and  
12 repeat it?

13 MR. STOLZ: I'll go up to the (indiscernible).

14 So we'll file our motion by Friday for certification  
15 on our notice of appeal. And Your Honor has entered a bench  
16 order essentially saying that it will be heard with the others  
17 on the 30th.

18 THE COURT: Correct. And we'll address the  
19 interlocutory nature as part of the briefing at that point in  
20 time.

21 MR. STOLZ: We'll address it in our brief and others  
22 can do so, as well. And just for the record, Your Honor, we  
23 have requested that the debtor consent to certification.  
24 They've advised us that they didn't consent in Bestwall and  
25 that it's still under advisement as to whether the debtor will



1 consent. So just wanted to let you know we met and conferred.

2 THE COURT: All right. Thank you.

3 Is that it on your checklist?

4 MR. STOLZ: That's it on my checklist, Your Honor.

5 THE COURT: The only other matter I wanted to touch  
6 on was the appointment of an examiner. We somehow skipped that  
7 over -- skipped over that. Since -- and I did -- I have  
8 reviewed the correspondence from both TCC Committees that raise  
9 objection to the appointment of an examiner at this point in  
10 time.

11 I think this also goes hand in hand with prospective  
12 derivative-standing motions that are being filed. I'm going to  
13 defer on the appointment of an examiner until someone makes it  
14 clear to the Court by motion or otherwise what issues are to be  
15 examined in light of my prior ruling or rulings.

16 And, obviously, the Court will entertain any motions  
17 seeking derivative standing when filed. I would hope and  
18 expect that in those motions the parties or the movants will  
19 identify the causes of actions to be pursued and the basis for  
20 looking into those. So at this juncture, I appreciate the  
21 debtor's proposal made during the hearings on the motion to  
22 dismiss, but I'll defer until a later point in time.

23 All right. Mr. Gordon?

24 MR. GORDON: I had a couple of things I'd like to  
25 raise --



1 THE COURT: Yes.

2 MR. GORDON: -- if I could, Your Honor.

3 The first is -- I always hate raising issues like  
4 this but with respect to that scheduled phone call on the  
5 mediation process, I'm actually going to be in a Third Circuit  
6 argument at that time. Now I suppose it's not critical that I  
7 be available for that and, obviously, I'll be involved in meet  
8 and confers with the other side. But at this point -- and we  
9 don't know exactly when the argument will go. There's three  
10 that are all set to start at 9:00 in the morning, but -- you  
11 know, at some point during that morning. So I may not be  
12 available, so I did want the Court to know that.

13 THE COURT: Well, I can adjust the schedule. I just  
14 picked that time. And I don't want to start working over  
15 everybody's schedule. I could have it in the afternoon or I  
16 could have it the next day. Do you have a preference?

17 MR. GORDON: I think Wednesday would be better if we  
18 could do it Wednesday.

19 THE COURT: Does that conflict with anybody? This is  
20 where I get into trouble.

21 UNIDENTIFIED SPEAKER: I think that's Your Honor's  
22 Chapter 13 day.

23 THE COURT: It gives me plenty of time.

24 (Laughter)

25 MR. GORDON: That's perfect.



1 THE COURT: Becca, Alex, are we good on that date?

2 THE CLERK: It's the 16th?

3 THE COURT: Yeah.

4 THE CLERK: Yeah, I think we're good.

5 THE COURT: How about 11:30 at that point?

6 MR. GORDON: That would work, Your Honor. I

7 appreciate it.

8 THE COURT: All right. 3/16.

9 MR. GORDON: Thank you.

10 And then the second thing and the substantive one is  
11 back to the FTICR issue that potential for a second FTICR, and  
12 you obviously know our position on that. But we were talking  
13 on the break that we didn't really flesh that process out at  
14 all. So I just had some questions to raise --

15 THE COURT: Sure.

16 MR. GORDON: -- and maybe get some guidance from the  
17 Court. The first thing that I would say make as a comment, I  
18 don't think the parties actually know which of the candidates  
19 have been struck because those communications were submitted ex  
20 parte to the Court. And so I think under the prior protocol,  
21 we assumed at some point Your Honor was going to tell us who  
22 were left, but I think we're going to need that in advance of  
23 that process.

24 THE COURT: I assume those correspondences have been  
25 docketed.



1 MR. GORDON: Not that I know of. I think they were  
2 ex parte.

3 MR. JONAS: (Indiscernible) ex parte, Your Honor.  
4 (Indiscernible) I conferred with the Court who advised us --

5 MR. GORDON: Right.

6 MR. JONAS: -- to set up an ex parte.

7 THE COURT: Well, I'll clear that up momentarily.

8 (Laughter)

9 MR. GORDON: And then the, you know, the related  
10 questions are basically how is this process going to work  
11 exactly. We're going to have another hearing. We didn't talk  
12 about whether there should be written submissions prior to that  
13 hearing and, if so, when and so that's one issue; and, also, if  
14 we're going to propose -- each of the constituents is going to  
15 propose another candidate, when that should be done and how it  
16 should be done. Would that be done ex parte, would it be done  
17 on the record, would it be a part of our written submissions?

18 So just some of the mechanics we realized that after  
19 we had the conversation earlier, we hadn't pinned any of those  
20 down.

21 THE COURT: All right. Thank you. Let's clarify it  
22 all.

23 (Pause)

24 THE COURT: So both TCC2 and TCC1 have struck, and I  
25 think that's the correct grammar, Joseph Greer and R. Scott



1 Williams. And the debtor has struck Marina Corodemus and Eric  
2 Green.

3 MR. GORDON: Okay.

4 THE COURT: So that places everybody on even keel as  
5 far as who's out there. You all know the remaining names.

6 MR. GORDON: Okay.

7 THE COURT: As far as the process, if we're having a  
8 hearing on 3/30, then I would ask for opposition papers to be  
9 filed seven days in advance to the appointment of an second  
10 FTCR and, as we've seen in this case, replies three days prior  
11 to the hearing.

12 I also would ask that in the event the Court were to  
13 agree upon the appointment -- well, actually, no. Why don't --  
14 let's have the hearing on 3/30 and see which way I decide and  
15 then I could set a very short schedule on giving me --  
16 providing me with names.

17 MR. GORDON: Okay.

18 THE COURT: You're welcome to talk about it in  
19 advance if you want to predict how the Court rules or gauge one  
20 way or the other, but apart from that, we'll wait until the  
21 hearing before I ask for names. All right?

22 MR. GORDON: Thank you, Your Honor. I appreciate  
23 that.

24 THE COURT: All right. Any other questions?

25 (No audible response)



1 THE COURT: We're done.

2 MR. GORDON: Thank you, Your Honor.

3 THE COURT: Take care, folks.

4 MR. GORDON: Thank you.

5 (Proceedings concluded at 1:36 p.m.)

6 \* \* \* \* \*

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8 **C E R T I F I C A T I O N**

9 We, KAREN WATSON, LORI KNOLLMEYER, and DIPTI PATEL,  
10 court approved transcribers, certify that the foregoing is a  
11 correct transcript from the official electronic sound recording  
12 of the proceedings in the above-entitled matter, and to the  
13 best of our ability.

14

15 /s/ Karen Watson

16 KAREN WATSON

17

18 /s/ Lori Knollmeyer

19 LORI KNOLLMEYER

20

21 /s/ Dipti Patel

22 DIPTI PATEL

23 J&J COURT TRANSCRIBERS, INC. DATE: March 9, 2022

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